

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 28 1998 *fw*

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

JACK DAVID COX,)

Defendant.)

Case No. 94-CR-51-E
96-C-876-E

ENTERED ON DOCKET
DATE MAY 29 1998

ORDER

Now before the Court is the Motion under 28 U.S.C. §2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody (docket #45) of the Defendant Jack David Cox (Cox).

Cox was indicted on April 6, 1994 and charged with 10 counts of extortion affecting interstate commerce in violation of the Hobbs Act, 18 U.S.C. §1951, which provides punishment for anyone who affects interstate commerce by robbery or extortion. When he was first tried, one count was dismissed, and a mistrial was declared as to the remaining nine counts. At the second trial, another count was dismissed, and Cox was found guilty on the remaining eight counts. Cox was sentenced to 300 months total imprisonment and fined \$1,000.00. He appealed his conviction and sentence, arguing that the trial court improperly admitted evidence of a prior bad act under Fed.R.Evid. 404(b), that the upward departure on his sentence was unjustifiable under the Sentencing Guidelines, and that the Hobbs Act is unconstitutional. Cox's conviction and sentence were affirmed on appeal on December 19, 1995.¹ The facts of this case have been fully set forth in the order on appeal, and will be reiterated here only as necessary.

¹United States v. Cox, No. 94-5215, 1995 WL 749689 (10th Cir. Dec. 19, 1995).

Cox now complains that he had ineffective assistance of counsel in that his trial attorney refused to subpoena witnesses whose testimony would have provided an alibi defense for some of the alleged offenses, his attorney failed to challenge the tape recording which allegedly contained his voice, and his attorney failed to stipulate to Rule 404(b) evidence. Moreover, Cox asserts in his "Traverse" to the Government's Response that, but for his ineffective assistance of counsel, the issue of the sufficiency of the tape recording would have been raised on direct appeal.

Because Cox bases all of his allegations of error on "ineffective assistance of counsel," the court will first address the standard under which such claims must be decided. The ineffective assistance of counsel claims must be viewed under the Strickland test: 1) whether defendant's attorney's performance was not reasonably effective and 2) whether defendant's defense was prejudiced thereby. Strickland v. Washington, 466 U.S. 668, 693, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Further, the Court must presume that counsel's performance was reasonably effective and "the burden rests on the accused to demonstrate a constitutional violation." U.S. v. Cronin, 104 S.Ct. 2039, 2046 (1984). Under the Strickland rule the presumption of effective representation is a strong one. Indeed, "[j]udicial scrutiny of counsel's performance must be highly deferential." Strickland, 104 S.Ct. at 2065. The Court must "presume that the challenged action might be considered sound trial strategy." Hatch v. State of Oklahoma, 58 F.3d 1447, 1459 (10th Cir. 1995).

Alibi Witnesses

Cox claims that his trial counsel provided ineffective assistance in failing to call three purported alibi witnesses. Specifically, Cox alleges that M. L. Nelson and Kathy Hollis-Cox, his ex-wife, would have provided an alibi for the evening of February 19, 1993, when the offenses involving TCBY and Long John Silver occurred (Counts 5 and 6). Also, Cox contends that Stephanie Cox,

his daughter, could have provided him an alibi for the evening of April 6, 1993, when the offense involving Phillips 66 occurred (Count 2). Cox states that these witnesses were willing to testify, and Cox requested his attorney to subpoena them to testify at his trial. However, Cox alleges that his attorney "refused to utilize Mr. Nelson because counsel stated Mr. Nelson was black and an ex-felon and the jury would not believe him." (#46 at 7-8). Cox alleges that his counsel refused to call Kathy Hollis-Cox because "she was Movant's ex-wife and the jury would not believe her." (#46 at 8).

In its response, the government attaches the affidavit of Stephen J. Greubel, Cox's trial attorney. Greubel avers that prior to trial he conducted extensive investigation with the assistance of an investigator assigned to the Office of the Federal Public Defender. These investigations included interviews with Maurice L. Nelson, Kathy Hollis-Cox, and Stephanie Jo Cox in addition to sixteen other potential witnesses. Greubel states that the interview with Stephanie Cox revealed that Cox was absent at times that evening from her apartment, which was less than a mile from the Phillips 66 station where the extortion attempt occurred. After Cox took a polygraph examination regarding his whereabouts during the evening of April 6, Greubel decided against presenting Stephanie Cox as an alibi witness.

Greubel states that Maurice Nelson was also interviewed as part of the pre-trial investigations. Nelson stated that Cox was with him at Nelson's home every night from February 14th through February 19th because Nelson was preparing Cox's 1992 income tax returns. Nelson said that he could remember this time period very well because "he was drinking a lot of Thunderbird wine when they were at his home." (#49, Ex. A at 3). Nelson related a trip he and Cox made to McAlester on February 17th and also confirmed that he was currently on parole following his conviction and prison sentence for unlawful delivery of a controlled substance. Greubel states that he determined that

Nelson was not a credible witness and could not provide any details as to Cox's whereabouts on the evening of February 19th. Therefore, Greubel decided not to present Mr. Nelson but to rely instead on attacking the identification testimony of the government's witnesses. Greubel states that Nelson's race played no part in his decision.

Finally, Greubel states that the investigation included several contacts with Kathy Hollis-Cox, who provided the names and locations of potential witnesses. Greubel did not consider her a credible witness for any relevant or useful purpose.

In his rebuttal brief, Cox does not dispute that Greubel investigated and interviewed these proposed witnesses, nor does he specifically counter any of the other factual allegations of Greubel's affidavit. Instead, Cox restates his prior allegations that these individuals were willing to testify and that their testimony was crucial to his defense.

As noted above, there is a "strong presumption that counsel's conduct falls within the range of reasonable professional assistance." Strickland, 466 U.S. at 688. The court must "judge . . . [a] counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id., at 690. "[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Id. at 689.

In this case, Cox fails to overcome the presumption that, under the circumstances, the challenged action—counsel's determination not to offer the alleged alibi witnesses—"might be considered sound trial strategy." Id. On the contrary, given counsel's admitted misgivings with respect to these witnesses' credibility problems and the weak probative value of their testimony, it is quite reasonable for defense counsel to have concluded that vigorous cross-examination of the government's witnesses would prove a more effective defense than the presentation of these

witnesses. The determination regarding whether to call a particular witness is a tactical decision and thus a matter of discretion for trial counsel. United States v. Janoe, 720 F.2d 1156, 1162 (10th Cir. 1983) (citing United States v. Miller, 643 F.2d 713, 714 (10th Cir.1981)). The Court will not now second-guess defense counsel's strategic decision to not call the three alleged alibi witnesses.

The Court's review of the trial proceedings establishes that the performance of Cox's attorney was well within the wide range of professionally competent assistance. The government's case rested in large part on the victims' identification of the voice they heard during the telephoned extortion attempts. Cox's attorney vigorously cross-examined each of these witnesses as to their identification of Cox's voice as the voice they heard over the telephone. It is clear that Cox's attorney was acting in an adversarial mode by challenging the government's theory that Cox was the person making the extortion attempts.

The Court is also unpersuaded, in light of the government's case, that counsel's failure to call these witnesses prejudiced the defense. The employee at the Phillips 66 station testified that he had "no doubt" that Cox's voice was the voice he heard over the telephone during the April 6th extortion attempt. (Tr. of Jury Trial at 27). The police officer responding to the call from the Phillips 66 station also testified that he saw Cox driving away from the station. (Tr. of Jury Trial at 34-35). In light of this evidence, Cox's daughter's account that he was at her apartment intermittently that evening would have had little probative value and certainly does not present a reasonable probability that the result of the proceeding would have been different, i.e., that Cox would not have been convicted of this particular offense.

Likewise, the witnesses who received the two extortion calls on February 19 testified that they were "90% sure" and "very confident" that Cox's voice was the voice they heard on the telephone

that night. (Tr. of Jury Trial at 60, 64, and 68). In light of their testimony, Cox's vague and conclusory assertions that Nelson and Kathy Hollis-Cox would have provided an alibi for these offenses does not demonstrate a reasonable probability that Cox would not have been convicted of these two charges.

Accordingly, Cox has failed to persuade the Court that his counsel's performance was outside the realm of a reasonably competent criminal attorney or that, in any event, the failure to present these witnesses prejudiced his defense. Strickland, 466 U.S. at 687-88.

Use of Tape Recording

The bulk of the government's case rested on the fact that each of the alleged victims listened to a tape which contained the voice of Cox and four other individuals, and identified Cox's voice as that of the individual who had called them to extort money. Cox did not testify, and the jury never heard his voice. Moreover, the tape utilized by the government was one made in 1990 by the Jasper, Texas Police Department. Cox argues that his counsel was ineffective because he made no objections whatsoever with regard to the tape which was used by the government. Cox asserts that his counsel should have objected because the government did not meet its burden of providing a foundation for the tape as set forth in United States v. McMillan, 508 F.2d 101, 104 (8th Cir. 1974) which requires the prosecution to demonstrate:

- (1) That the recording device was capable of taking the conversation now offered in evidence.
- (2) That the operator was competent to operate the device.
- (3) That the recording is authentic and correct.
- (4) That changes, additions, or deletions have not been made in the recording.
- (5) That the recording has been preserved in a manner that is shown to the court.

- (6) That the speakers on the tape are identified.
- (7) That the conversation elicited was made voluntarily and in good faith without any kind of inducement.

In this regard, it is important to note that Cox's counsel did, in both trials, conduct a voir dire examination of the detective who made the recording. In the first trial Cox's counsel specifically objected to the admission of the tape, arguing that it was unreliable, that it did not "mirror the types of extortionate calls" that were at issue in this case, and that it was not made using a telephone, as was used in the alleged crimes. (Tr. of Jury Trial at 8). These objections were overruled. (Tr. of Jury Trial at 8). In the second trial, after conducting a voir dire examination, counsel objected to the tape on the basis that it was "an unreliable method of identification," that the machine wasn't calibrated prior to making the tape, that the tape wasn't made through a telephone device, and that there was not a selection of individuals who most closely resembled the voice of Jack Cox. (Tr. of Jury Trial at 11). These objections were also overruled. (Tr. of Jury Trial at 11).

Moreover, this Circuit has specifically rejected the notion that inflexible foundation criteria such as those set forth in McMillan are appropriate. United States v. McIntyre, 836 F.2d 467, 470 (10th Cir. 1988). Rather, that Court held that, while such criteria "may assist a trial judge in ruling upon foundation questions, [the Court of Appeals] will not upset the judge's admission of a recording unless the foundation was clearly insufficient to insure the accuracy of the recording." Id. (quoting United States v. Jones, 730 F.2d 593, 597 (10th Cir. 1984)). In considering both the law of this Circuit on the admissibility of tapes, and the objections made by counsel at both trials, this Court concludes that the conduct of counsel at trial with respect to the tape was certainly within the sphere of reasonable effectiveness required by Strickland.

However, because Cox suggests in his "Traverse" that he had ineffective assistance of counsel on appeal because the issue regarding admissibility of tapes was not raised on appeal, this court will also examine whether Cox was prejudiced by that failure, or, in effect, whether the decision to admit the tapes was erroneous. Considering the testimony of the detective from the Jasper Police Department, both on direct and on voir dire from defense counsel, the Court concludes that a proper foundation was laid for the admissibility of the tape. Moreover, the Court notes that Cox has no authority nor evidence for his primary argument, that, in order to be admissible, the tape would have had to have been made by recording over the telephone, since the threats at issue in this case were made over the phone. The Court could find no legal authority to support this proposition, and concludes that common sense does not support it either.


Failure to Stipulate on 404(b) Evidence

Cox's last proposition of error, although somewhat cryptic, appears to be that he received ineffective assistance of counsel when his counsel failed to stipulate to certain Rule 404(b) evidence to prevent prejudicial evidence that "slipped in" during the 404(b) testimony. In making this argument, Cox relies on Old Chief v. United States, 117 S.Ct. 644, 519 U.S. 172, 136 L.Ed.2d 574 (1997) wherein the Supreme Court held that the trial court abused its discretion in allowing the government to introduce a judgment record for a conviction of assault causing serious bodily injury when the defendant had offered to stipulate that he had been convicted of a crime punishable by imprisonment exceeding one year, which is an element of the crime for which he was then being tried. Old Chief does not help Cox for two reasons. First, it is factually distinguishable. An abuse of discretion by the court in not accepting a stipulation is not tantamount to ineffective assistance of counsel in not proposing such a stipulation, and, in fact, the Court concluded that four of the eight

extrinsic acts sought to be introduced by the government should not be admitted. (#33). The record reveals that counsel vigorously opposed the introduction of the 404(b) evidence in a pretrial hearing. Moreover, the Court does not agree with Cox's unsupported assertion that the testimony of a high speed chase and other details of the crime were "more prejudicial than probative." Lastly, the Court of Appeals examined this issue on direct appeal and specifically found that the trial court weighed the probative value of the evidence against the potential for unfair prejudice and the court properly "adhered to the requirement of Huddleston² to ensure that Mr. Cox was not unfairly prejudiced." Thus, the Court finds that neither of the requirements of Strickland are met with regard to this allegation of error.

Cox's motion under 28 U.S.C. §2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody (docket #45) is denied.

IT IS SO ORDERED THIS 28th DAY OF MAY, 1998.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

²Huddleston v. United States, 485 U.S. 681, 691 (1988).

FILED**UNITED STATES DISTRICT COURT**
Northern District of Oklahoma

MAY 27 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-178-004-C

ENTERED ON DOCKET

JEROME PERKINS
Defendant.DATE 5-27-98**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

The defendant, JEROME PERKINS, was represented by Richard Couch.

On motion of the United States the court has dismissed Counts 1 & 2 of the Indictment.

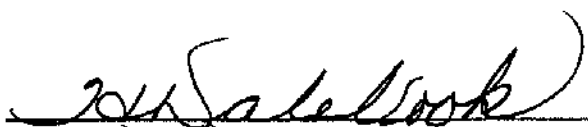
The defendant pleaded guilty to Count 3 of the Indictment, February 18, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 924(c)&2	Possession of a Firearm During a Crime of Violence and Aiding and Abetting	11/12/97	3

As pronounced on May 19, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

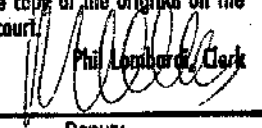
It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 3 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 26th day of May, 1998.

 The Honorable H. Dale Cook
 United States District Judge

 Defendant's SSN: 565-53-3127
 Defendant's Date of Birth: 7/1/78
 Defendant's mailing address: 3453 N. Delaware, Tulsa OK 74110
 Defendant's residence address: Tulsa County Jail

 United States District Court } ss
 Northern District of Oklahoma }
 I hereby certify that the foregoing
 is a true copy of the original on file
 in this court.

 Phil Lombardi, Clerk
 By 
 Deputy

Defendant: JEROME PERKINS
Case Number: 97-CR-178-004-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 months.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be incarcerated at a facility specializing in comprehensive drug treatment, and that he be evaluated and provided such psychological counseling as deemed appropriate.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: JEROME PERKINS
Case Number: 97-CR-178-004-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JEROME PERKINS
Case Number: 97-CR-178-004-C

RESTITUTION AND FORFEITURE**RESTITUTION**

The defendant shall make restitution jointly and severally, with Terrance Banks, Marricco Sykes, and Gregory McBee, in the total amount of \$194. The Court waives the interest on restitution.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
The Jumpstart Club Tulsa, Oklahoma	\$127
Git-N-Go Store #34 Tulsa, Oklahoma	\$67

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release, except that no further payment shall be required after the sum of the amounts actually paid by all co-defendants has fully covered the compensable injury.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: JEROME PERKINS
Case Number: 97-CR-178-004-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	n/a
Criminal History Category:	n/a
Imprisonment Range:	60 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 0 to \$ 250,000
Restitution:	\$ 194

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

BJJ

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

FILED

MAY 27 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-178-001-C ✓

TERRENCE BANKS
Defendant.

ENTERED ON DOCKET

DATE 5-27-98

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

The defendant, TERRENCE BANKS, was represented by Jack Schisler.

On motion of the United States the court has dismissed Counts 1 & 2 of the Indictment.

The defendant pleaded guilty to Count 3 of the Indictment, February 18, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 924(c) & 2	Possession of a Firearm During Commission of a Crime of Violence and Aiding and Abetting	11/12/97	3

As pronounced on May 19, 1998, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 3 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 26th day of May, 1998.

United States District Court
Northern District of Oklahoma

I hereby certify that the foregoing
is a true copy of the original on file
in this court.

Phil Lombardi, Clerk

By

Deputy

H. Dale Cook
The Honorable H. Dale Cook
United States District Judge

Defendant's SSN: 491-70-8963

Defendant's Date of Birth: 05/18/73

Defendant's residence and mailing address: Rt. 2 Box 21, Silvey Ferguson Street, Fayette MO 65248

Defendant: **TERRENCE BANKS**
Case Number: **97-CR-178-001-C**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 months.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: TERRENCE BANKS
Case Number: 97-CR-178-001-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: **TERRENCE BANKS**
Case Number: **97-CR-178-001-C**

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 500, as to Count 3. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: TERRENCE BANKS
Case Number: 97-CR-178-001-C

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$127.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Jump Start Club Attn: Alma King & Tom Benson 424 S. Memorial Tulsa OK 74112	\$127

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release, except that no further payment shall be required after the sum of the amounts actually paid by all defendants has fully covered the compensable injury.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: **TERRENCE BANKS**
Case Number: **97-CR-178-001-C**

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	n/a
Criminal History Category:	n/a
Imprisonment Range:	60 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 0 to \$ 250,000
Restitution:	\$ 127

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

aw
FILED**UNITED STATES DISTRICT COURT**
Northern District of Oklahoma

MAY 27 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-178-003-C ✓ *no*GREGORY MCBEE JR.
Defendant.**ENTERED ON DOCKET**DATE 5-27-98**JUDGMENT IN A CRIMINAL CASE**
(For Offenses Committed On or After November 1, 1987)

The defendant, GREGORY MCBEE JR., was represented by RW "Bud" Byars.

On motion of the United States the court has dismissed Counts 1, 2, & 4 of the Indictment.

The defendant pleaded guilty to Counts 3 & 5 of the Indictment, February 18, 1998. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 924(c) & 2	Possession of a Firearm During a Crime of Violence and Aiding and Abetting	11/12/97	3
18 USC 924(c) & 2	Possession of a Firearm During a Crime of Violence and Aiding and Abetting	11/9/97	5

As pronounced on May 19, 1998, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 200, for Counts 3 & 5 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 26th day of May, 1998.*H. Dale Cook*
The Honorable H. Dale Cook
United States District Judge

Defendant's SSN: 446-76-6518

Defendant's Date of Birth: 10/06/79

Defendant's residence and mailing address: 2217 E. 59th Street #218, Tulsa OK

United States District Court
Northern District of Oklahoma } SS
I hereby certify that the foregoing
is a true copy of the original on file
in this court.By *Phil Lombardi*
Deputy

Defendant: GREGORY MCBEE JR.
Case Number: 97-CR-178-003-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 300 months. Term consists of 60 months as to Count 3 and 240 months as to Count 5, said terms to run consecutively.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: GREGORY MCBEE JR.
Case Number: 97-CR-178-003-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to each count, said terms to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: GREGORY MCBEE JR.
Case Number: 97-CR-178-003-C

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 500, as to Count 3. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: GREGORY MCBEE JR.
Case Number: 97-CR-178-003-C

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$194.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Jump Start Club Attn: Alma King & Tom Benson 424 S. Memorial Tulsa OK 74112	\$127
Git-N-Go Corporation Headquarters Attn: Restitution 9316 E. 73rd Street Tulsa OK 74133	\$67

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release, except that no further payment shall be required after the sum of the amounts actually paid by all defendants has fully covered the compensable injury.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: GREGORY MCBEE JR.
Case Number: 97-CR-178-003-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	n/a	
Criminal History Category:	n/a	
Imprisonment Range:	60 months	Ct. 3
	240 months	Ct. 5
Supervised Release Range:	2 to 3 years	Cts. 3 & 5
Fine Range:	\$ 0 to \$ 250,000	Cts. 3. & 5
Restitution:	\$ 194	

The sentence is within the guideline range, that range does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

FILED

MAY 27 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-178-002-C ✓

ENTERED ON DOCKET

MARRICCO SYKES
Defendant.DATE 5-27-98

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, MARRICCO SYKES, was represented by Keith Ward.

On motion of the United States the court has dismissed Counts 1, 2, & 4 of the Indictment.

The defendant pleaded guilty to Counts 3 & 5 of the Indictment, February 18, 1998. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 924(c) & 2	Possession of a Firearm During a Crime of Violence and Aiding and Abetting	11/12/97	3
18 USC 924(c) & 2	Possession of a Firearm During a Crime of Violence and Aiding and Abetting	11/9/97	5

As pronounced on May 21, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 200, for Counts 3 & 5 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 26th day of May, 1998.

H. Dale Cook
 The Honorable H. Dale Cook
 United States District Judge

Defendant's SSN: 442-92-8171

Defendant's Date of Birth: 11/7/79

Defendant's mailing address: 737 E. 32nd Place North, Tulsa OK

Defendant's residence address: Tulsa County Jail

United States District Court
 Northern District of Oklahoma) SS
 I hereby certify that the foregoing
 is a true copy of the original on file
 in this court.
Phil Lombardi
 Phil Lombardi, Clerk
 By _____ Deputy

Defendant: MARRICCO SYKES
Case Number: 97-CR-178-002-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 220 months, 60 months as to Count 3, and 160 months as to Count 5, said terms to run consecutively, for a total sentence of 220 months.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be incarcerated in a facility specializing in Comprehensive Drug Treatment.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: MARRICCO SYKES
Case Number: 97-CR-178-002-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to each count, said terms to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: MARRICCO SYKES
Case Number: 97-CR-178-002-C

RESTITUTION AND FORFEITURE**RESTITUTION**

The defendant shall make restitution in the total amount of \$194. Interest on restitution is waived.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Git-N-Go Corporate Headquarters Attn: Restitution 8316 E. 73rd Tulsa OK 74133	\$67
Jumpstart Club Attn: Alma King and Tom Benson 124 S. Memorial Tulsa OK 74112	\$127

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release. The Court orders that the restitution be paid joint and several with the co-defendants in this case, Terrance Banks, Gregory McBee, and Jerome Perkins.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: MARRICCO SYKES
Case Number: 97-CR-178-002-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	n/a	
Criminal History Category:	n/a	
Imprisonment Range:	60 months	Ct. 3
	240 months	Ct. 5
Supervised Release Range:	2 to 3 years	Cts. 3&5
Fine Range:	\$ 0 to \$ 250,000	Cts. 3&5
Restitution:	\$ 194	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence departs from the guideline range upon motion of the government, as a result of the defendant's substantial assistance.

FILED

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

MAY 27 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-176-004-C

RONALD SHAW
Defendant.

ENTERED ON DOCKET

DATE 5/27/98

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, RONALD SHAW, was represented by F. Randolph Lynn.

On motion of the United States the court has dismissed Counts 2 & 41 of the Superseding Indictment.

The defendant pleaded guilty to Counts 42 of the Indictment, February 19, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 924(c) & 2	Possession of a Firearm While in Commission of a Violent Crime and Aiding and Abetting	11/19/97	42

As pronounced on May 20, 1998, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 42 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 26th day of May, 1998.


The Honorable H. Dale Cook
United States District Judge

Defendant's SSN: 445-24-1999

Defendant's Date of Birth: 12/14/77

Defendant's mailing address: 6380 N. Boulder Avenue, Tulsa OK 74127

Defendant's residence address: Tulsa County Jail, 500 S. Denver, Tulsa OK 74127

United States District Court } ss
Northern District of Oklahoma }
I hereby certify that the foregoing
is a true copy of the original on file
in this court.

Phil Lombardi, Clerk
By BM Lombardi
Deputy

Defendant: RONALD SHAW
Case Number: 97-CR-176-004-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 months.

The Court makes the following recommendations to the Bureau of Prisons: that the Bureau of Prisons Designate the defendant to a facility other than FCI El Reno due to safety concerns of the defendant.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: RONALD SHAW
Case Number: 97-CR-176-004-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: RONALD SHAW
Case Number: 97-CR-176-004-C

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 500, as to Count 42. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: RONALD SHAW
Case Number: 97-CR-176-004-C

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$509. Interest on restitution is waived.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Little Caesar's Pizza 201 N. Mission Sapulpa OK 74066	\$509

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release, except that no further payment shall be required after the sum of the amounts actually paid by defendant and codefendant Marcus Gill has fully covered the compensable injury.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: RONALD SHAW
Case Number: 97-CR-176-004-C


STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	n/a
Criminal History Category:	n/a
Imprisonment Range:	60 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 0 to \$ 250,000
Restitution:	\$ 509

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.



UNITED STATES DISTRICT COURT
Northern District of Oklahoma

FILED

MAY 27 1998

UNITED STATES OF AMERICA

Phil Lombardi, Clerk
U.S. DISTRICT COURT

v.

Case Number 97-CR-150-001-C

GUSTAVO ROSALES
Defendant.

ENTERED ON DOCKET

DATE 5/27/98

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, GUSTAVO ROSALES, was represented by Larry D. Wagener.

The defendant was found guilty February 10, 1998, on Count 1 of the Indictment after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

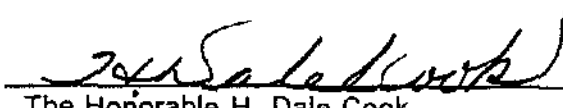
Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 USC 841(a)(1) &(b)(1)(A)	Possession With Intent to Distribute Methamphetamine	10/07/97	1

As pronounced on May 20, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 26th day of May, 1998.


The Honorable H. Dale Cook
United States District Judge

Defendant's SSN: 612-98-8695
Defendant's Date of Birth: 12/23/73
Defendant's residence and mailing address: Tulsa County Jail

United States District Court }
Northern District of Oklahoma } SS
I hereby certify that the foregoing
is a true copy of the original on file
in this court.

Phil Lombardi, Clerk
By B.M. Cullen
Deputy

Defendant: GUSTAVO ROSALES
Case Number: 97-CR-150-001-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 151 months.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be placed in a facility near Los Angeles, California.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: GUSTAVO ROSALES
Case Number: 97-CR-150-001-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. As a condition of supervised release, upon completion of your term of imprisonment, you are to be surrendered to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Naturalization Act, 8 USC §§ 1101-1524. It is a further condition of supervised release, if ordered deported, you shall remain outside the United States until termination of supervised release. Should you serve any portion of supervised release within the United States, the mentioned conditions are ordered.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: GUSTAVO ROSALES
Case Number: 97-CR-150-001-C

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 1500, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: GUSTAVO ROSALES
Case Number: 97-CR-150-001-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	34
Criminal History Category:	I
Imprisonment Range:	151 months to 188 months
Supervised Release Range:	5 years
Fine Range:	\$ 17,500 to \$ 4,000,000
Restitution:	\$ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s): because this was the defendant's first felony conviction and the offense involved one (1) drug transaction.

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

FILED

MAY 27 1998

UNITED STATES OF AMERICA

Phil Lombardi, Clerk
U.S. DISTRICT COURT

v.

Case Number 97-CR-182-001-C

JULIA A. MEYERS
Defendant.

ENTERED ON DOCKET

DATE

5/27/98

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

The defendant, JULIA A. MEYERS, was represented by Robert Payden.

The defendant pleaded guilty to Count 1 of the Indictment, February 24, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1344(1)	Bank Fraud	8/29/97	1

As pronounced on May 20, 1998, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 26th day of May, 1998.


The Honorable H. Dale Cook
United States District Judge

Defendant's SSN: 513-70-1882

Defendant's Date of Birth: 2/14/61

Defendant's residence and mailing address: 411 W. K Place #702, Jenks OK 74037

United States District Court)
Northern District of Oklahoma) SS
I hereby certify that the foregoing
is a true copy of the original on file
in this court.

Phil Lombardi, Clerk
By 
Deputy

Defendant: JULIA A. MEYERS
Case Number: 97-CR-182-001-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 3 months.

The Court makes the following recommendations to the Bureau of Prisons: that the Bureau of Prisons designate Turley Correctional Center as the place of confinement.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 9:00 a.m. on June 22, 1998.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: JULIA A. MEYERS
Case Number: 97-CR-182-001-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall participate in a program of mental health treatment (to include inpatient), as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Officer.
5. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of 3 months, to commence within 72 hours of release from imprisonment. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JULIA A. MEYERS
Case Number: 97-CR-182-001-C

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 200, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: JULIA A. MEYERS
Case Number: 97-CR-182-001-C

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$1,886.34.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Tulsa Federal Employees's Credit Union 9323 E. 21st Street Tulsa OK 74101-0267 Attn: Penny Runyon	1,886.34

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: JULIA A. MEYERS
Case Number: 97-CR-182-001-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	7
Criminal History Category:	III
Imprisonment Range:	4 months to 10 months
Supervised Release Range:	3 to 5 years
Fine Range:	\$ 500 to \$ 5,000
Restitution:	\$ 1,886.34

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by application of the guidelines.

cm

FILED

MAY 27 1998

UNITED STATES DISTRICT COURT
Northern District of OklahomaPhil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-176-002-C

ENTERED ON DOCKET

TONY BAKER
Defendant.DATE 5/27/98**JUDGMENT IN A CRIMINAL CASE**
(For Offenses Committed On or After November 1, 1987)

The defendant, TONY BAKER, was represented by Mike McBride, III.

On motion of the United States the court has dismissed Counts 1, 21, 22, 31, 33-35 & 37 of the Superseding Indictment.

The defendant pleaded guilty to Counts 32, 36 & 38 of the Superseding Indictment, March 5, 1998. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 924® & 2	Possession of a Firearm While in Commission of a Violent Crime and Aiding and Abetting	10/29/97	32
18 USC 924® & 2	Possession of a Firearm While in Commission of a Violent Crime and Aiding and Abetting	10/29/97	36
18 USC 924® & 2	Possession of a Firearm While in Commission of a Violent Crime and Aiding and Abetting	11/04/97	38

As pronounced on May 20, 1998, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 300, for Counts 32, 36 & 38 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 26 day of May, 1998.

[Signature]
The Honorable H. Dale Cook
United States District Judge
United States District Court
Northern District of Oklahoma } SS
I hereby certify that the foregoing
is a true copy of the original on file
in this court.
Phil Lombardi, Clerk
By *[Signature]*
Deputy

Defendant's SSN: 444-76-0483

Defendant's Date of Birth: 06/27/79

Defendant's residence and mailing address: 1049 E. 60th Street #922, Tulsa OK 74105

Defendant: TONY BAKER
Case Number: 97-CR-176-002-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 540 months. 60 months as to Count 32, 240 months as to Count 36, and 240 months as to Count 38, said terms to run consecutively, each to the other, for a total of 540 months.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be designated to a facility as close to Tulsa, Oklahoma as possible and that the defendant be placed where he can participate in Comprehensive Drug Treatment.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: TONY BAKER
Case Number: 97-CR-176-002-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years, as to each of Counts 32, 36, & 38, said terms to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

ENTERED ON DOCKET

DATE 5-21-98

UNITED STATES OF AMERICA

v.

Case Number 97-CR-129-001-K

JESSE ALFRED BALL
Defendant.

FILED

MAY 21 1998

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

The defendant, JESSE ALFRED BALL, was represented by Ronald W. Uselton.

The defendant pleaded guilty to Count 1 of the Indictment, December 5, 1997. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 922(g)	Possession of a Firearm After Former Conviction of a Felony	3/14/97	1

As pronounced on May 12, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 19 day of May, 1998.

 The Honorable Jerry C. Kern, Chief
 United States District Judge

Defendant's SSN: 461-92-2958

Defendant's Date of Birth: 8/13/48

Defendant's residence and mailing address: Tulsa County Jail, 500 S. Denver, Tulsa OK 74103

Defendant: TONY BAKER
Case Number: 97-CR-176-002-C

RESTITUTION AND FORFEITURE

RESTITUTION CON'T

Blimpie Sandwich Shops 8222 S. Lewis Avenue Tulsa OK 74137	\$236	Dustyn W. Bell 11211 S. Erie Tulsa OK 74133	\$200
Wendy's 10152 E. 31 Street Tulsa OK 74129	\$3,000		

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release, except that no further payment shall be required after the sum of the amounts actually paid by defendant and codefendants Alonzo Nolan & Marcus Gill has fully covered the compensable injury.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: TONY BAKER
Case Number: 97-CR-176-002-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	n/a	
Criminal History Category:	n/a	
Imprisonment Range:	60 months	Ct. 32
	240 months	Ct. 36
	240 months	Ct. 38
Supervised Release Range:	2 to 3 years	Cts. 32, 36 & 38
Fine Range:	\$ 0 to \$ 250,000	Cts. 32, 36 & 38
Restitution:	\$ 15,954.02	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by the guidelines.

[Handwritten signature]

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 97-CR-032-005-K

MELISSA HOPE COOKE
 Defendant.

ENTERED ON DOCKET

DATE 5-26-98**FILED**

MAY 22 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT IN A CRIMINAL CASE
 (For Offenses Committed On or After November 1, 1987)

The defendant, MELISSA HOPE COOKE, was represented by G. Steven Stidham.

The defendant pleaded guilty to Count 1 of the Indictment, January 7, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 371	Conspiracy to Utter, Possess and Pass Forged Securities	02/09/97	1

As pronounced on May 12, 1998, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 21 day of May, 1998.


 The Honorable Terry C. Kern, Chief
 United States District Judge

Defendant's SSN: 505-96-4861
 Defendant's Date of Birth: 11/14/75
 Defendant's mailing address: 1507 E. 66th Street North, Tulsa OK 74126
 Defendant's residence address: 3300 Martin Luther King Blvd., Oklahoma City OK 73136

Defendant: MELISSA HOPE COOKE
Case Number: 97-CR-032-005-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 17 months, said term to run concurrently with terms imposed in Rogers County Case CF96-347, Okmulgee County Cases HCF 97-5009, HCF 97-5010 & CF97-61.

The Court makes the following recommendations to the Bureau of Prisons: that the Oklahoma Department of Corrections be designated as the place of service of sentence.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: MELISSA HOPE COOKE
Case Number: 97-CR-032-005-K

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency. The defendant shall perform 100 hours of community service, as directed by the Probation Office.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
 - 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
 - 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
 - 4) The defendant shall support his or her dependents and meet other family responsibilities.
 - 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
 - 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
 - 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
 - 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
 - 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
 - 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
 - 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
 - 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: MELISSA HOPE COOKE
Case Number: 97-CR-032-005-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	7
Criminal History Category:	VI
Imprisonment Range:	15 months to 21 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 500 to \$ 5,000
Restitution:	\$ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

BJS

FILED

MAY 21 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURTUNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 97-CR-167-001-BU

TANGELA MCGEE
Defendant.

ENTERED ON DOCKET

DATE 5.22.98**JUDGMENT IN A CRIMINAL CASE**
(For Offenses Committed On or After November 1, 1987)

The defendant, TANGELA MCGEE, was represented by Michael McGuire.

The defendant pleaded guilty to Count 1 of the Indictment, February 19, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 2113(a)	Attempted Bank Robbery	9/26/97	1

As pronounced on May 19, 1998, the defendant is sentenced as provided in pages 2 through 3 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 21st day of May, 1998.

 The Honorable Michael Burrage
 United States District Judge
United States District Court) SS
Northern District of Oklahoma)I hereby certify that the foregoing
is a true copy of the original on file
in this court.

Phil Lombardi, Clerk

By Rosanne J. Miller
Clerk

Defendant's SSN: 428-31-0199

Defendant's Date of Birth: 12/12/77

Defendant's residence and mailing address: None

Defendant: TANGELA MCGEE

Case Number: 97-CR-167-001-BU

PROBATION

The defendant is hereby placed on probation for a term of five (5) years.

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
4. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
5. The defendant shall participate in family and/or individual counseling as directed by the United States Probation Office until such time as released from the program by the United States Probation Office.

STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: TANGELA MCGEE
Case Number: 97-CR-167-001-BU

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	26
Criminal History Category:	II
Imprisonment Range:	70 months to 87 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 12,500 to \$ 125,000
Restitution:	\$ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The Court imposes the agreed upon sentence pursuant to Fed. R. Crim. P. 11(e)(1)(C).

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

ENTERED ON DOCKET

DATE 5-21-98

UNITED STATES OF AMERICA

v.

Case Number 97-CR-129-001-K

JESSE ALFRED BALL
Defendant.

FILED

MAY 21 1998

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

The defendant, JESSE ALFRED BALL, was represented by Ronald W. Uselton.

The defendant pleaded guilty to Count 1 of the Indictment, December 5, 1997. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 922(g)	Possession of a Firearm After Former Conviction of a Felony	3/14/97	1

As pronounced on May 12, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 19 day of May, 1998.


The Honorable Jerry C. Kern, Chief
United States District Judge

Defendant's SSN: 461-92-2958

Defendant's Date of Birth: 8/13/48

Defendant's residence and mailing address: Tulsa County Jail, 500 S. Denver, Tulsa OK 74103

Defendant: JESSE ALFRED BALL
Case Number: 97-CR-129-001-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 64 months.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be placed in a facility equipped to provide Comprehensive Substance Abuse Treatment during his period of incarceration.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: JESSE ALFRED BALL
Case Number: 97-CR-129-001-K

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 4) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JESSE ALFRED BALL
Case Number: 97-CR-129-001-K

FINE

The defendant shall pay a fine of \$ 1,000, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: JESSE ALFRED BALL
Case Number: 97-CR-129-001-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	21
Criminal History Category:	IV
Imprisonment Range:	57 months to 71 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 7,500 to \$ 75,000
Restitution:	\$ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

cw

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

ENTERED ON DOCKET
DATE 5-21-98

UNITED STATES OF AMERICA

v.

Case Number 97-CR-154-001-K

LISA RENEE BELL
Defendant.

FILED

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

MAY 21 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

The defendant, LISA RENEE BELL, was represented by Stephen J. Greubel.

On motion of the United States the court has dismissed Counts 1, 2, 3, & 5 of the Indictment.

The defendant pleaded guilty to Count 4 of the Indictment, January 13, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 408 (a)(7)(B)	Use of a False Social Security Number	5/8/97	4

As pronounced on May 13, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 4 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 19 day of May, 1998.

Terry C. Kern
The Honorable Terry C. Kern, Chief
United States District Judge

Defendant's SSN: 357-60-4153

Defendant's Date of Birth: 3/22/61

Defendant's residence and mailing address: 2532 E. 6th Street, Tulsa OK 74104

Defendant: LISA RENEE BELL
Case Number: 97-CR-154-001-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 14 months.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 p.m. on June 15, 1998.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: LISA RENEE BELL
Case Number: 97-CR-154-001-K

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: LISA RENEE BELL
Case Number: 97-CR-154-001-K

RESTITUTION AND FORFEITURE**RESTITUTION**

The defendant shall make restitution in the total amount of \$19,579.74. The interest on the restitution is waived.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Stillwater National Bank PO Box 1988 Stillwater OK 74076 Attn: Gigi Abt reference # 4731880991015754	\$4,421.50
Tulsa Federal Employees Credit Union 9323 East 21st Street Tulsa OK 74129 Attn: Mark Clews reference loan 3	\$12,277.80
Tulsa Federal Employees Credit Union 9323 East 21st Street Tulsa OK 74129 Attn: Mark Clews reference loan 1	\$2,880.44

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: LISA RENEE BELL
Case Number: 97-CR-154-001-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report, except the defendant is entitled to a two level reduction in offense level for acceptance of responsibility.

Guideline Range Determined by the Court:

Total Offense Level:	9
Criminal History Category:	IV
Imprisonment Range:	12 months to 18 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 1,000 to \$ 250,000
Restitution:	\$ 19,579.74

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 97-CR-181-001-K

ENTERED ON DOCKET

DATE 5-21-98

MARLA KATHLEEN PINKSTON-WIELAND
Defendant.

FILED

MAY 21 1998

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987) Phil Lombardi, Clerk
U.S. DISTRICT COURT

The defendant, MARLA KATHLEEN PINKSTON-WIELAND, was represented by Jack Schisler.

The defendant pleaded guilty to Count 1 of the Indictment, February 12, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy to Obstruct Correspondence and Steal mail Matter	6/13/97	1

As pronounced on May 13, 1998, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 19 day of May, 1998.


The Honorable Terry C. Kern, Chief
United States District Judge

Defendant's SSN: 445-74-8100

Defendant's Date of Birth: 2/17/69

Defendant's residence and mailing address: PO Box 1621, Claremore OK 74017

Defendant: MARLA KATHLEEN PINKSTON-WIELAND
Case Number: 97-CR-181-001-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 16 months.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be placed at a facility where she may receive intensive substance abuse treatment and be given the opportunity to complete the Intensive Substance Abuse Treatment program.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: MARLA KATHLEEN PINKSTON-WIELAND
Case Number: 97-CR-181-001-K

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgment shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall perform 100 hours of community service, as directed by the Probation Office.
7. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: MARLA KATHLEEN PINKSTON-WIELAND

Case Number: 97-CR-181-001-K

RESTITUTION AND FORFEITURE**RESTITUTION**

The defendant shall make restitution in the total amount of \$4,646.56. The interest on restitution is waived.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>		<u>Amount of Restitution</u>
Wai-Mart 7777 E. 42 Place South Tulsa OK 74145 Attn: Cash Office	\$50.66	Zales through Jewelers Financial Services PO Box 152753 Irving TX 75015-2753 Attn: Rhonda Blevins
Service Merchandise 8219 E. 68th Street Tulsa OK 74133 Attn: Floyd Margason	\$310.77	Horner Foods dba Price Mart #5 9136 East 31 Street Tulsa OK 74145 Attn: Bruce Scott
Circuit City 9954 Mayland Drive Richmond, Virginia 23233	\$442.44	Med X Corporation dba Drug Mart PO Box 700870 Tulsa OK 74170
Bowdens 101 North Wilson Sand Springs OK 74063	\$17.60	Kirlins 532 Main Street Quincy, Illinois 62305 Attn: Mary Lock
Git-N-Go through Master Check PO Box 637 Stillwater OK 74076	\$41.37	Homeland Stores, Incorporated PO Box 25008 Oklahoma City OK 73125 Attn: Craig Nelson
QuickTrip PO Box 2828 Tulsa OK 74101 Attn: Collections Acct. # 356156	\$42.79	Buds #11 2710 South Harvard Tulsa OK 74114
K-Mart RSO PO Box 8130 Palatine, Illinois 60078-8130 Attn: Legal Department Control # 3088423	\$657.53	Mardels #3 7727 SW 44th Street Oklahoma City OK 73179 Attn: Accounts Receivable
Mervyns through Dayton Hudson Corporation c/o Check Administration PO Box 960 Minneapolis, Minnesota 55440 Customer Acct # 480722190	\$227.88	Braums Ice Cream Store Oklahoma City, Oklahoma Attn: Bill Pendergraft

Defendant: MARLA KATHLEEN PINKSTON-WIELAND
Case Number: 97-CR-181-001-K

RESTITUTION AND FORFEITURE**RESTITUTION**

Drysdales 3220 South Memorial Drive Tulsa OK 74145 Attn: Comptroller	\$304.26	K Bar B 6414 North Peoria Tulsa OK 74126	\$1,269.72
Horner Foods dba Price Mart #3 9136 East 31st Street Tulsa OK 74145 Attn: Bruce Scott	\$84.89	American Check Cashers 5051 South Yale Tulsa OK 74135 Attn: Brian Sipes	\$375
Albertson's PO Box 20 Boise ID 83726 Attn: Department R	\$88.36	J.C. Penny Company, Inc. PO Box 10001 Dallas, TX 75301-0046 Attn: Steve Frank	\$53.94
Sutherlands-Broken Arrow 1800 North Elm Place Broken Arrow OK 74012 Attn: Scott Sottilo	\$156.46	Warehouse Market 2121 South Garnett Road Tulsa OK 74129	\$55.23
Sutherlands-East 9503 East 21st Street Tulsa OK 74129 Attn: Rick Payne	\$13.88		

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: MARLA KATHLEEN PINKSTON-WIELAND
Case Number: 97-CR-181-001-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	7
Criminal History Category:	V
Imprisonment Range:	12 months to 18 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 500 to \$ 5,000
Restitution:	\$ 4,646.56

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

BJJ

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

ENTERED ON DOCKET

UNITED STATES OF AMERICA

DATE 5-21-98

v.

Case Number 97-CR-057-002-K

BRADLEY PLOWMAN
Defendant.JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

FILED

MAY 21 1998

The defendant, BRADLEY PLOWMAN, was represented by Randy Morley, Phil Lombardi, Clerk
U.S. DISTRICT COURT

On motion of the United States the court has dismissed Counts 2 through 10 of the Indictment.

The defendant pleaded guilty January 13, 1998, to Count 1 of the Indictment. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
8 USC 371	Conspiracy to Commit Bank Fraud	12/9/94	1

As pronounced on May 11, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 19 day of May, 1998.

 The Honorable Terry C. Kern, Chief
 United States District Judge

Defendant's SSN: 374-66-2030

Defendant's Date of Birth: 1/1/65

Defendant's residence and mailing address: c/o U.S. Marshals Service

Defendant: BRADLEY PLOWMAN
Case Number: 97-CR-057-002-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 17 months.

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends that the Bureau of Prisons designate a facility in the State of Michigan, or as close as possible, as the place of incarceration for this sentence.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: BRADLEY PLOWMAN
Case Number: 97-CR-057-002-K

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: BRADLEY PLOWMAN
Case Number: 97-CR-057-002-K

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$4,935.00.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Bank of Oklahoma Attn: Lowell Faulkenberry (Defendant Bradley Plowman for loss on account # 857006292) PO Box 2300 Tulsa, Oklahoma 74192	\$4,935.00

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release, except that no further payment shall be required after the sum of the amounts actually paid by all defendants has fully covered the compensable injury.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: BRADLEY PLOWMAN
Case Number: 97-CR-057-002-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	7
Criminal History Category:	V
Imprisonment Range:	12 months to 18 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 500 to \$ 5,000
Restitution:	\$ 4,935.00

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 15 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STACY WARREN GOREE,

Defendant.

Case No. 95-CR-46-03-B
(97-CV-286-B)

ENTERED ON DOCKET
DATE **MAY 18 1998**

JUDGMENT

This matter came before the Court upon Defendant's motion to vacate set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant.

SO ORDERED THIS 15th day of May, 1998.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 15 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STACY WARREN GOREE,

Defendant.

No. 95-CR-46-03-B
97-CV-286-B

DATE
MAY 18 1998
ENTERED ON DOCKET

ORDER

Before the Court is the *pro se* Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Docket #33). Plaintiff United States of America has filed its response (#35) to which Defendant has filed a reply (#37). Defendant has also filed a "Motion to Compel Ruling on 2255 Motion" (#42). After reviewing the entire record in this case, the Court has determined that an evidentiary hearing is not necessary, that Defendant's claim is procedurally barred and the motion pursuant to § 2255 should be denied, and that the motion to compel ruling should be denied as moot.

BACKGROUND

In Count One of an indictment filed April 4, 1995, Defendant Stacy Goree, aka Andre Davis and "Snake," was charged with conspiracy to possess 500 grams or more of cocaine with intent to distribute. Three others were also charged in Count One: Delores Morgan, Kevin Guice aka Troy Banks, and Cindy (LNU (Last Name Unknown)). Delores Morgan was also charged in Count Two with the substantive offense of possession of cocaine with intent to distribute. After her arrest on a preceding Complaint, co-defendant Morgan cooperated with the government and testified before the Grand Jury.

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These charges arose out of events which occurred on March 27 and 28, 1995. On March 27, Defendant and Guice contacted Morgan, who was living in southern California at the time, and offered her money to accompany them to Tulsa and transport drugs in her checked luggage. On March 28, the three made the trip to Tulsa and, based on a tip from California authorities, Tulsa police located the drugs in Morgan's suitcase and arrested her. Based on information provided by Morgan, Defendant and co-defendant Guice were indicted and arrested. Morgan subsequently pled guilty to Count One and was sentenced to 5 years probation. Co-defendant Guice pled guilty and was sentenced to 60 months imprisonment. Defendant also pled guilty pursuant to a plea agreement in which the government agreed that it would recommend the minimum sentence under the sentencing guidelines and would recommend no enhancements be added to arrive at the total offense level.

However, the Presentence Report ("PSR") prepared by the United States Probation Office recommended that the offense level under the United States Sentencing Guidelines ("USSG") be enhanced by 2 points pursuant to USSG § 3B1.1(c) because Defendant served as an organizer, leader, manager, or supervisor of the criminal activity. Defense counsel filed written objections to the upward adjustment and moved for a downward departure. (#29). At sentencing, the Court denied the motion for downward departure, adopted the findings and guideline application of the PSR and found a total guidelines offense level of 25 with a corresponding imprisonment range of 84 to 105 months. The Court sentenced Defendant to the minimum imprisonment time under the guidelines, 84 months, to be followed by 5 years of supervised release, and ordered Defendant to pay a fine of \$3,000. (#31). Defendant did not appeal.

In his current motion pursuant to § 2255, Defendant requests the Court to vacate the 2 point enhancement because the Probation Officer relied on disputed, inconclusive testimony of co-

defendant Morgan in coming to the conclusion that Defendant was the leader of the criminal activity. Plaintiff objects to the relief requested, on the grounds that: (1) claims of error under the USSG are generally not cognizable on § 2255 motions; (2) the issue is procedurally barred because Defendant did not raise it on appeal and Defendant has failed to establish cause or prejudice to overcome the bar; and (3) addressing the merits, sufficient evidence supported the enhancement for Defendant's aggravating role in the criminal activity. In his reply, Defendant does not assert any reason for his failure to appeal; rather, he cites an advisory committee note to Rule 2, Rules Governing § 2255 Proceedings, which notes that a movant should not be barred from an appropriate remedy because he has misstated his motion.

ANALYSIS

The Court first addresses Plaintiff's defense that Defendant's ground for relief is procedurally barred. It is well settled that "[s]ection 2255 motions are not available to test the legality of matters which should have been raised on direct appeal." United States v. Warner, 23 F.3d 287, 291 (10th Cir. 1994) (citation omitted). Consequently, a defendant may not assert issues which were not raised on direct appeal unless he establishes cause for his default and prejudice resulting therefrom, or can show that a fundamental miscarriage of justice will occur if his claim is not addressed. United States v. Allen, 16 F.3d 377, 378 (10th Cir. 1994) (failure to file appeal); United States v. Cook, 45 F.3d 388, 392 (10th Cir. 1995) (failure to raise issues on appeal). The procedural default rules developed in the context of habeas corpus cases apply with equal force in § 2255 cases. United States v. Frady, 456 U.S. 152, 166-69 n. 15 (1982).

The "cause" standard requires a defendant to show that some objective factor external to the defense impeded his ability to raise an issue on direct appeal. See Murray v. Carrier, 477 U.S. 478,

488 (1986). Examples of such external factors include the discovery of new evidence or a change in the law. Id. As for prejudice, a defendant must show "'actual prejudice' resulting from the errors of which he complains." United States v. Frady, 456 U.S. 152, 168 (1982). The "fundamental miscarriage of justice" exception requires a petitioner to demonstrate that he is "actually innocent" of the crime of which he was convicted. McCleskey v. Zant, 499 U.S. 467, 494 (1991).

Defendant makes no attempt to show cause for his failure to appeal his sentence. His response to the issue of procedural default is to cite Rule 2, Rules Governing § 2255 Proceedings, which refers to a court's construing motions for correction of a sentence according to their proper nature rather than literally as they are styled (e.g., construing a § 2255 motion as a Rule 35 motion and vice versa). This doctrine is not relevant to the issue of whether Defendant is barred from seeking collateral relief under § 2255 when he has failed to file a direct appeal challenging his sentence. Therefore, the Court concludes that Defendant has failed to show cause for his default.

The only other avenue by which Defendant can have this claim reviewed is by showing that a "fundamental miscarriage of justice" will result if the procedural bar is invoked. This exception applies "where a constitutional violation has probably resulted in the conviction of one who is actually innocent." Murray v. Carrier, 477 U.S. 478, 496 (1986). Here, Defendant does not allege that he is actually innocent of the crime to which he pled guilty (i.e., conspiracy to possess cocaine with intent to distribute it); he claims only that he should have received a lesser sentence because the 2 point enhancement is not supported by the evidence. Thus, Defendant does not meet the "actual innocence" exception to the procedural bar.

Accordingly, because Defendant has not shown cause for his failure to raise this issue on direct appeal or prejudice resulting therefrom, or that a miscarriage of justice would result if this issue


is not reached on its merits, the Court is procedurally barred from reaching the claim raised in his motion under § 2255.

CONCLUSION

Defendant's claim that his sentence was improperly enhanced for his role in the criminal activity is procedurally barred. Therefore, the Court concludes that Defendant's motion to vacate, set aside, or correct sentence should be denied.

ACCORDINGLY, IT IS HEREBY ORDERED that Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (#33) is **denied**. Defendant's "Motion to Compel Ruling on 2255 Motion" (#42) is **denied** as moot.

SO ORDERED THIS 15th day of May, 1998.



THOMAS R. BRETT, Senior Judge
UNITED STATES DISTRICT Court

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 97-CR-168-001-H

JEREMIAH R. HARDEN
Defendant.JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)FILED
MAY 15 1998
Phil Lombardi, Clerk
U.S. DISTRICT COURT

The defendant, JEREMIAH R. HARDEN, was represented by Jack Schisler.

On motion of the United States the court has dismissed Counts 1 & 2 of the Indictment.

The defendant pleaded guilty February 6, 1998, to Count 3 of the Indictment. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
26 USC 5861(d)	Possession of Non-Registered Firearm	7/29/97	3

As pronounced on May 8, 1998, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 3 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 13TH day of May, 1998.
The Honorable Sven Erik Holmes
United States District Judge

Defendant's SSN: 447-80-1412

Defendant's Date of Birth: 5/8/79

Defendant's residence and mailing address: Rt. 3, Box 210, Mounds OK 74047

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Defendant: JEREMIAH R. HARDEN

Case Number: 97-CR-168-001-H

PROBATION

The defendant is hereby placed on probation for a term of 3 years.

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
3. The Court suspends the requirements for mandatory urine screening as dictated by 18 USC § 3608, but specifically retains the probation officer's authority to administer such tests for cause as permitted by the standard conditions of supervision.
4. The first year of the term of Probation shall be served in home confinement at the Brush Creek Ranch in Jay, Oklahoma.

STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JEREMIAH R. HARDEN
Case Number: 97-CR-168-001-H

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 500, as to Count 3. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: JEREMIAH R. HARDEN
Case Number: 97-CR-168-001-H

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	17
Criminal History Category:	II
Imprisonment Range:	27 months to 33 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 5,000 to \$ 50,000
Restitution:	\$ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence departs from the guideline range for the following reason(s): The Court finds that a downward departure is warranted in this case pursuant to USSG § 5K2.0, based on the following combination of factors: First, the firearm involved in this case is not typical of the types of prohibited devices described in 18 USC § 5845(a), and there is no evidence that the defendant intended to use the firearm with any criminal intent. Second, Harden's parents were aware of the firearm and failed to discourage Harden from altering or possessing it. Third, based on the lack of socialization and maturity exhibited by the defendant, he faces a higher likelihood of abuse and victimization in prison than most defendants. Finally, the defendant's Criminal History Category overstates the seriousness of his prior criminal conduct.

BJS

MAY 15 1998

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 97-CR-084-001-H ✓

THAO DINH LE
Defendant.JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)**FILED**
MAY 11 1998
Phil Lombardi, Clerk
U.S. DISTRICT COURT

The defendant, THAO DINH LE, was represented by Mark Lyons.

On motion of the United States the court has dismissed Counts 1, 2, 4, 7, 8 & 9 of the Second Superseding Indictment.

The defendant pleaded guilty to Counts 3, 5, & 6 of the Second Superseding Indictment December 12, 1997. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 922(g)(3)	Unlawful Possession of Machine Guns by b User of a Controlled Substance	7/3/97	3
26 USC 5845, 5861(d) & 5871	Unlawful Possession of an Unregistered Firearm; Explosive Device	7/3/97	5
18 USC 924(c)	Carrying a Firearm During and in Relation to a Federal Drug Trafficking Crime	3/30/97	6

As pronounced on April 24, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 300, for Counts 3, 5, & 6 of the Second Superseding Indictment, which shall be due immediately.

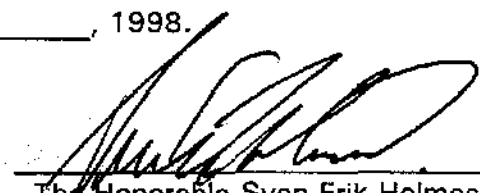
It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 8th day of May, 1998.

Defendant's SSN: 586-18-1892

Defendant's Date of Birth: 2/11/60

Defendant's residence and mailing address: c/o US Marshals Service/Bureau of Prisons


The Honorable Sven Erik Holmes
United States District Judge

Defendant: THAO DINH LE
Case Number: 97-CR-084-001-H

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 130 months; 70 months as to each of Counts 3 & 5, said terms to run concurrently, each with the other, and 60 months as to Count 6, said term to run consecutively with the terms imposed in Counts 3 & 5.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: THAO DINH LE
Case Number: 97-CR-084-001-H

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years, as to each of Counts 3, 5, & 6, said terms to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: THAO DINH LE
Case Number: 97-CR-084-001-H

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$3,213.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Department of Defense c/o Defense Criminal Investigation Services 6111 East Skelly Drive Tulsa OK 74135	\$3,213

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: THAO DINH LE
Case Number: 97-CR-084-001-H

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report, except on page 9, in paragraph 21 (fifth line), the words "unregistered" & "machine" shall be deleted from the report.

Guideline Range Determined by the Court:

Total Offense Level:	26	
Criminal History Category:	I	
Imprisonment Range:	63 months to 78 months	Cts. 3 & 5
	60 months	Ct. 6
Supervised Release Range:	2 to 3 years	Cts. 3, 5 & 6
Fine Range:	\$ 12,500 to \$ 125,000	
Restitution:	\$ 3,213	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by application of the guidelines.

RTS

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 13 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA
Plaintiff

VS

SHAWNA L. MARTIN
Defendant

Case Number 95-CR-108-001-B

ORDER REVOKING SUPERVISED RELEASE

ENTERED ON DOCKET

DATE **MAY 14 1998**

Now on this 6th day of May 1998, this cause comes on for sentencing concerning allegations that Martin violated conditions of supervised release as set out in the Petition on Supervised Release filed on November 19, 1997. Martin is present in person and represented by counsel, Jack Schisler. The Government is represented by Assistant United States Attorney, Kevin Leitch and the United States Probation Office is represented by David Plunkett.

On December 11, 1997, a Revocation Hearing was held regarding the allegations noted in the Petition on Supervised Release, filed on November 19, 1997, said allegations being that the defendant committed law violations during her period of supervised release.

Martin stipulated to the violations as alleged in the petition. The Court found that Martin was in violation of the conditions of her release and passed sentencing to May 6, 1998, to allow time for Martin to address other legal issues. The defendant's additional criminal activities, subsequent to her Revocation Hearing, were noted in the Sentencing Memorandum and were addressed during the Sentencing Hearing. The Court proceeded with sentencing and found that the original conviction occurred after November 1, 1987, and that Chapter 7 of the U. S. Sentencing Guidelines is applicable.

Further, the Court found that the violation of supervised release constituted Grade B violations in

United States District Court
Northern District of Oklahoma) ss
I hereby certify that the foregoing
is a true copy of the original on file
in this court.

Phil Lombardi, Clerk

By _____
Deputy

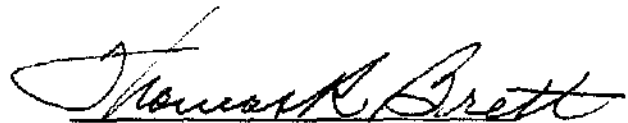
accordance with USSG § 7B1.1(a)(2), and Martin's Criminal History Category of III is applicable for determining the imprisonment range. In addition, the Court found that a Grade B violation and a Criminal History Category of III establish a revocation imprisonment range of eight (8) to fourteen (14) months in accordance with USSG § 7B1.4(a) and 18 U.S.C. § 3583(e). In consideration of these findings and pursuant to U.S. vs. Lee, 757 F.2d 770 (10th Cir. 1992), in which the circuit determined that the policy statements in Chapter 7 were not mandatory, but must be considered by the Court, the following sentence is ordered:

It is the judgment of the Court that the defendant, Shawna L. Martin, is hereby committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of eight (8) months.

Upon release from imprisonment, Martin shall be placed on supervised release for a term of 2 years. Within 72 hours of release from custody of the Bureau of Prisons, Martin shall report in person to the probation office in the district to which she is released. While on supervised release, Martin shall not commit another federal, state, or local crime, shall comply with the standard conditions of supervised release that have been adopted by this Court, and shall comply with the following additional conditions:

1. Martin shall not own or possess a firearm or destructive device.
2. Martin shall abide by the Special Search and Seizure Condition as enumerated in Miscellaneous Order M-128, filed with the Clerk of the Court on May 25, 1995.
3. Martin is prohibited from maintaining any bank account during her period of supervised release, and may conduct business on a cash basis only.

Martin shall report to the U.S. Marshal's Office on ~~May 11, 1998~~ ^{June 22, 1998 by 3:00 p.m.} at ~~10:00 a.m.~~ ^{10:00 a.m.}



The Honorable Thomas R. Brett
Senior United States District Judge

FILED

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

MAY 13 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-141-001-BU

LANCE DAVID SMITH
Defendant.

ENTERED ON DOCKET

DATE 5-14-98

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, LANCE DAVID SMITH, was represented by Jack Schisler.

The defendant pleaded guilty January 29, to Count 1 of the Information. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 1341 & 2(b)	Mail Fraud, Causing A Criminal Act	2/97	1

As pronounced on April 30, 1998, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 13th day of May, 1998.

United States District Court
Northern District of Oklahoma) SS

I hereby certify that the foregoing
is a true and correct copy of the original on file

by Phil Lombardi
Clerk

by R. Miller
Deputy

Michael Burrage
The Honorable Michael Burrage
United States District Judge

Defendant's SSN: 448-52-8084

Defendant's Date of Birth: 9/22/60

Defendant's residence and mailing address: 511 N. 69 E. Avenue, Tulsa OK 74115

Defendant: LANCE DAVID SMITH
Case Number: 97-CR-141-001-BU

PROBATION

The defendant is hereby placed on probation for a term of five (5) years.

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall be placed on home detention at the discretion of the U. S. Probation Office for a period of six (6) months. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
5. The Court suspends the requirements for mandatory urine screening as dictated by 18 USC § 3608, but specifically retains the probation officer's authority to administer such tests for cause as permitted by the standard conditions of supervision.
6. Initial 60 day period prohibiting out-of-district travel is waived. Any travel connected with employment in the Continental United States is allowed, with advanced notice given to the Probation Office.

STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: LANCE DAVID SMITH
Case Number: 97-CR-141-001-BU

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$21,485.75.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
John Zink Company Box 21220 Tulsa OK 74121-1220 Attn: Scott Hill	\$21,485.75

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: LANCE DAVID SMITH
Case Number: 97-CR-141-001-BU

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	10
Criminal History Category:	I
Imprisonment Range:	6 months to 12 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 2,000 to \$ 20,000
Restitution:	\$ 21,485.75

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by application of the guidelines.

FILED

MAY 13 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURTUNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 97-CR-021-001-BU

LOU ANN SMITHLING
Defendant.

ENTERED ON DOCKET

DATE 5-14-98

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, LOU ANN SMITHLING, was represented by Stephen J. Knorr.

On motion of the United States the court has dismissed Counts 1 & 2 of the Indictment.

The defendant pleaded guilty to Count 3 of the Indictment, January 29, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 1001	False Statement to a Government Agency	01/10/96	3

As pronounced on April 30, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for Count 3 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 13th day of May, 1998.United States District Court)
Northern District of Oklahoma) ssI hereby certify that the foregoing
is a true copy of the original on file
in this court.

Phil Lombardi, Clerk

By R. Miller
DeputyMichael B. Burtage
The Honorable Michael Burtage
United States District Judge

Defendant's SSN: 440-74-6841

Defendant's Date of Birth: 6/15/62

Defendant's residence and mailing address: 6050 Sally Brown Road, Muskogee OK 74403

Defendant: LOU ANN SMITHLING
Case Number: 97-CR-021-001-BU

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 5 months.

The Court makes the following recommendations to the Bureau of Prisons: 1) That the defendant serve the term of imprisonment at the Turley Community Corrections Center in Tulsa, Oklahoma, and 2) the defendant participate in an intensive substance abuse treatment program while in custody.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 noon on June 16, 1998.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: LOU ANN SMITHLING
Case Number: 97-CR-021-001-BU

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall participate in a program of mental health treatment (to include inpatient), as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Officer.
6. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of four (4) months, to commence within 72 hours of release from imprisonment. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the U.S. Probation Office.
7. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
8. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
9. The defendant shall perform 100 hours of community service, as directed by the Probation Office.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: LOU ANN SMITHLING
Case Number: 97-CR-021-001-BU

RESTITUTION AND FORFEITURE**RESTITUTION**

The defendant shall make restitution in the total amount of \$6,649.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Tulsa Housing Authority 415 E. Independence PO Box 6369 Tulsa OK 74106-0369	\$6,649

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: LOU ANN SMITHLING
Case Number: 97-CR-021-001-BU

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	6
Criminal History Category:	V
Imprisonment Range:	9 months to 15 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 500 to \$ 5,000
Restitution:	\$ 6,649

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by application of the guidelines.

FILED

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

MAY 11 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-148-002-C

BARBARA STEGAL
Defendant.

ENTERED ON DOCKET

DATE 5/12/98**JUDGMENT IN A CRIMINAL CASE**
(For Offenses Committed On or After November 1, 1987)

The defendant, BARBARA STEGAL, was represented by Stephen J. Knorr.

On motion of the United States the court has dismissed Count 1 of the Indictment.

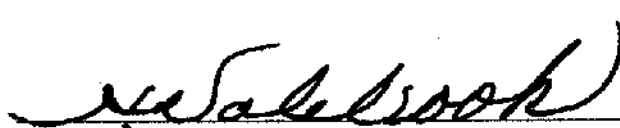
The defendant pleaded guilty February 2, 1998, to Count 1 of the Information. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 4	Misprision of a Felony	9/26/97	1

As pronounced on May 6, 1998, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 11 day of May, 1998.

 The Honorable H. Dale Cook
 United States District Judge

Defendant's SSN: 444-42-7147

Defendant's Date of Birth: 5/11/42

Defendant's residence and mailing address: 4110 W. Perrier Drive, Skiatook OK 74070

 United States District Court
 Northern District of Oklahoma
 I hereby certify that the foregoing
 is a true copy of the original on file
 in this court.

Phil Lombardi, Clerk

By BM^c Cullough
Deputy

Defendant: BARBARA STEGAL
Case Number: 97-CR-148-002-C

PROBATION

The defendant is hereby placed on probation for a term of 3 years.

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
4. The Court suspends the requirements for mandatory urine screening as dictated by 18 USC § 3608, but specifically retains the probation officer's authority to administer such tests for cause as permitted by the standard conditions of supervision.

STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: BARBARA STEGAL
Case Number: 97-CR-148-002-C

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 250, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of Probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: BARBARA STEGAL
Case Number: 97-CR-148-002-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	5
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	1 year
Fine Range:	\$ 250 to \$ 5,000
Restitution:	\$ n/a

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

BJS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 11 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT EARL JOHNSON,

Defendant.

No. 91-CR-80-B
(97-CV-222-B)

ENTERED ON DOCKET

DATE **MAY 12 1998**

ORDER

Before the Court is the motion of *pro se* Defendant, Robert Earl Johnson, to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Docket #155). The Government has filed its response (#167) to which Defendant has filed a reply (#170). After reviewing the entire record in this case, the Court has determined that an evidentiary hearing is not necessary and that the motion lacks merit and should be denied.

BACKGROUND

Defendant Robert Earl Johnson was charged in a three-count superseding indictment filed August 7, 1991. Count One charged Defendant and co-defendants Charles Edwin Nottingham, Monty Wood, Gerald Carroll, and Dee Dee Romo, also known and referred to hereinafter as Deidre Harrell, with conspiracy to commit armed bank robbery, in violation of 18 U.S.C. § 371. Count Two charged Defendant and his four co-defendants with armed bank robbery, in violation of 18 U.S.C. § 2113(a) and (d) and 18 U.S.C. § 2. Defendant and co-defendant Carroll were charged as principals and co-defendants Nottingham, Wood, and Harrell were charged with aiding and abetting and causing the commission of the offense. Count Three charged Defendant and Carroll with carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c).

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during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c).

These charges arose out of the June 22, 1990 robbery of the Cimarron Federal Savings and Loan Association ("Cimarron bank") in Tulsa. Shortly after his arrest on the initial indictment filed on June 5, 1991, co-defendant Wood, on the advice of his attorney, Ronald Mook, approached the government and indicated his willingness to cooperate. The government did not offer Wood a deal at that time; nevertheless, Mook and Wood decided to tape record Wood's telephone calls with other members of the conspiracy. Wood subsequently pled guilty to conspiracy to rob a bank (Count Two) and, in accordance with the plea agreement, testified against Defendant and the other co-defendants at trial. The tapes of telephone conversations between Wood and Nottingham, and Wood and Carroll, recorded between June 21, 1991 and August 15, 1991, were played for the jury and introduced into evidence.

Wood testified that he was friends with co-defendant Harrell, who was employed as a vault teller at the Cimarron bank. Harrell told Wood how to go about robbing this particular bank. Wood, in turn, discussed this information with co-defendant Nottingham, who said he knew two people who could do the robbery, Mickey and Jamar. Wood identified Mickey as Defendant Johnson, and Jamar as co-defendant Carroll. As planned, Defendant and Carroll entered the bank during the lunch hour and Defendant bypassed the teller windows and approached Harrell in the vault area. Co-defendant Carroll stayed in the back of the bank. Defendant directed Harrell to fill up a pillowcase with money and at one point Defendant hit Harrell's hand with the gun.

After the robbery, Nottingham and Kenneth Thompson, who testified for the government at trial, arrived at Wood's girlfriend's apartment with a duffel bag containing approximately \$10,000 and two guns, .38 and .45 caliber handguns.

The jury found Defendant guilty on all charges. On January 7, 1992, Defendant was sentenced to a total of 120 months imprisonment on Counts One and Two to run concurrently, and to 60 months on Count Three to run consecutively, for a total of 180 months imprisonment. Defendant was also sentenced to 5 years supervised release and ordered to pay \$7,000 in restitution.

On direct appeal, Defendant through newly-appointed counsel challenged his conviction on the following grounds:

- (1) Insufficient evidence to support the charge of conspiracy (Count One);
- (2) Insufficient evidence to support the charge of bank robbery (Count Two);
- (3) Insufficient evidence to support the charge of possession of a firearm during commission of a felony (Count Three);
- (4) The Court erred in determining that the Government had met its burden sufficient to permit the introduction of co-conspirator hearsay statements;
- (5) The Court erred in allowing the government to delete as surplusage the phrase "each armed with handguns" from Count One (conspiracy) of the superseding indictment.

The Court of Appeals for the Tenth Circuit affirmed Defendant's conviction in an opinion consolidating the appeals of Defendant and his co-defendants Nottingham, Harrell, and Carroll. United States v. Johnson, 4 F.3d 904 (10th Cir. 1993). The United States Supreme Court denied certiorari, 510 U.S. 1123 (1994).

In his instant motion pursuant to § 2255, Defendant raises three issues:

- (1) His prosecution, conviction and sentence on Count Three, carrying a firearm during and in relation to a crime of violence, results in double jeopardy.
- (2) His constitutional right to confrontation was violated by the introduction of non-testifying co-defendant's confessions; and
- (3) He was denied effective assistance of counsel based upon eight listed grounds.

The Plaintiff raises the defense of procedural bar as to the first two issues and alternatively asserts that they fail on the merits. Plaintiff also asserts that Defendant's allegations of ineffective assistance of counsel are without merit.

ANALYSIS

A. Procedural Bar.

It is well settled that "[s]ection 2255 motions are not available to test the legality of matters which should have been raised on direct appeal." United States v. Warner, 23 F.3d 287, 291 (10th Cir. 1994) (citation omitted). Consequently, a defendant may not assert issues which were not raised in his direct appeal unless he establishes cause for his default and prejudice resulting therefrom, or can show that a fundamental miscarriage of justice will occur if his claim is not addressed. United States v. Cook, 45 F.3d 388, 392 (10th Cir.1995). The procedural default rules developed in the context of habeas corpus cases apply with equal force in § 2255 cases. United States v. Frady, 456 U.S. 152, 166-69 n. 15 (1982).

The "cause" standard requires a defendant to show that some objective factor external to the defense impeded his ability to raise an issue on direct appeal. See Murray v. Carrier, 477 U.S. 478, 488 (1986). Examples of such external factors include the discovery of new evidence or a change in the law. Id. Ineffective assistance of counsel is another example of an external factor that may constitute "cause" excusing a procedural default. Cook, 45 F.3d at 392. As for prejudice, a defendant must show "'actual prejudice' resulting from the errors of which he complains." Frady, 456 U.S. at 168 (1982). The "fundamental miscarriage of justice" exception requires a petitioner to demonstrate that he is "actually innocent" of the crime of which he was convicted. McCleskey v. Zant, 499 U.S. 467, 494 (1991).

In his reply brief, Defendant does not specifically allege that his claims regarding double jeopardy and the confrontation clause were omitted on appeal due to ineffective assistance of counsel. However, he does state that these "errors" occurred because of ineffective assistance of counsel, and "[t]hus, each of these claims are inextricably intertwined in the constitutional claim of ineffective assistance of counsel and, as such, are not contrary to the government argument of procedurally barred [sic]." (#170 at 7). Therefore, construing Defendant's *pro se* motion liberally as required by Haines v. Kerner, 404 U.S. 519, 520 (1972), the Court examines whether Defendant's allegations of ineffective assistance of counsel constitute "cause" sufficient to overcome the procedural bar as to his first two claims.

To establish ineffective assistance of counsel a defendant must show that his counsel's performance was deficient and that the deficient performance was prejudicial. Strickland v. Washington, 466 U.S. 668, 687 (1984). Although the Strickland test was formulated in the context of evaluating a claim of ineffective assistance of trial counsel, the same test is applied in assessing the ineffectiveness of appellate counsel. Cook, 45 F.3d at 392.

Because the procedural bar is imposed due to Defendant's failure to raise his claims on direct appeal, the Court must examine the merits of the issues omitted upon appeal. Id. If the omitted issues are without merit, counsel's failure to raise them does not amount to constitutionally ineffective assistance of counsel. Id. at 393.

1. Double jeopardy claim and additional claims included in Defendant's reply brief.

In his original motion, Defendant asserts that his right not to be subjected to double jeopardy was violated because the elements of Count Three (carrying of a pistol, in violation of 18 U.S.C. § 924(c)) constitute a lesser included offense of Count Two (armed bank robbery, in violation of 18

U.S.C. § 2113(a) and (d)). Defendant states that the indictment and the jury instructions required for both Counts a finding of a crime of violence by use of a dangerous weapon or device, and that both §§ 2113(d) and 924(c)(1) create an enhanced punishment for using a firearm. Defendant requests the Court to vacate his conviction and sentence on Count Three.

In his reply brief, Defendant also raises new issues relating to his conviction on Count Three. He now alleges a violation under Bailey v. United States, 116 S.Ct 501 (1995), relating to the meaning of "use or carrying" of a firearm under § 924(c), and secondly alleges that the government did not prove that the alleged weapon was a firearm, rather than a replica or starter pistol, and did not prove bank robbery but only bank larceny, since the government theory of the robbery proved it was not a crime of violence but a staged robbery.

The Court initially notes that these latter issues are not properly before the Court, as Defendant may not raise new issues by including them in his reply brief. Cf. Shanahan v. City of Chicago, 82 F.3d 776, 781 (7th Cir. 1996) (stating it is axiomatic that a plaintiff may not amend his complaint through arguments in his brief in opposition to a motion for summary judgment). The correct procedure which Defendant should have followed is to move pursuant to Rule 15, Fed. R. Civ. Proc., for leave of court to amend his § 2255 motion to raise these new claims. However, bearing in mind that leave to amend is to be freely granted, and in the interests of justice and expediency, the Court considers these issues notwithstanding Defendant's failure to properly present them.

a. Double Jeopardy claim.

Defendant asserts that his constitutional protection against double jeopardy was violated by his prosecution and conviction for the offenses of armed bank robbery and carrying a firearm during

and relation to a crime of violence. Plaintiff responds that this issue is controlled by the Tenth Circuit's decision in United States v. Lanzi, 933 F.2d 824 (10th Cir. 1991).

The relevant portions of the statutes defining the offenses are as follows:

18 U.S.C. § 2113 (1991).¹ Bank robbery and incidental crimes.

- (a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another ... any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any ... savings and loan ... [S]hall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.
- (d) Whoever, in committing ... any offense defined in subsections (a) and (b) of this section assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than \$10,000 or imprisoned not more than twenty-five years, or both.

18 U.S.C. § 924 (1991). Penalties.

- (c)(1) Whoever, during and in relation to any crime of violence ... *(including a crime of violence ... which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device)* for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence ... be sentenced to imprisonment for five years ... Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence ... in which the firearm was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein. (emphasis added)

¹ All statutory references are to statutes in effect at the time Defendant was sentenced.

Defendant contends that both offenses include the same element—use of a firearm; thus his prosecution under both statutes violates his right not to be put in jeopardy twice for the same offense.

This Court disagrees and, as discussed below, concurs with Plaintiff that this issue is controlled by Tenth Circuit precedent.

The Double Jeopardy Clause protects a defendant from "multiple punishments for the same offense." North Carolina v. Pearce, 395 U.S. 711, 717 (1969). In cases where a defendant is punished for the same conduct under two different statutory provisions, "the first step in the double jeopardy analysis is to determine whether the legislature ... intended that each violation be a separate offense." Lanzi, 933 F.2d at 825 (quoting Garrett v. United States, 471 U.S. 773, 778 (1985)). "If the legislature, as expressed in the language of the statute or its legislative history, clearly intended cumulative punishment under two different statutory provisions, the imposition of multiple punishment does not violate the Double Jeopardy Clause and the court's inquiry is at an end. Id. (citing Missouri v. Hunter, 459 U.S. 359, 368-69 (1983)).

If the legislative intent is unclear, then "[t]he applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not." Blockburger v. United States, 284 U.S. 299, 304 (1932). "This test emphasizes the elements of the two crimes. 'If each requires proof of a fact that the other does not, the Blockburger test is satisfied, notwithstanding a substantial overlap in the proof offered to establish the crimes.'" Brown v. Ohio, 432 U.S. 161, 166 (1977) (quoted case omitted).

In Lanzi, the defendant was charged with robbing a credit union at gunpoint and was convicted of bank robbery and of using a firearm during the robbery. 933 F.2d at 825. The trial

court ordered the defendant's sentence under § 924(c) to run concurrently with his robbery sentence, believing that consecutive sentences would violate the Double Jeopardy clause because the defendant would be punished twice for the same offense. Id. The government appealed, and the sentence was reversed on appeal.

The Tenth Circuit applied the first step of the double jeopardy analysis and determined that Congress clearly authorized multiple punishments under § 924(c); thus, there was no need to apply the Blockburger test. Id. at 826. Reviewing the legislative history of § 924(c), the Court first noted that in 1984, Congress amended § 924(c) (originally enacted in 1968) to clarify that its sentencing enhancement would apply regardless of whether the underlying felony statute contained an enhancement provision. Id.

The Tenth Circuit also cited a Senate Report referring expressly to the bank robbery statute, 18 U.S.C. § 2113, as one of the federal crimes of violence to which § 924 applies. Id. Accordingly, the Tenth Circuit rejected defendant's double jeopardy argument and ordered that his sentence under § 924(c)(1) run consecutively to his armed robbery sentence under §§ 2113(a) and (d). Id.

The United States Supreme Court implicitly endorsed the Tenth Circuit's conclusion in Lanzi in its opinion holding that sentences under § 924(c) must be imposed consecutively to state sentences as well as federal sentences. United States v. Gonzales, 117 S. Ct. 1032 (1997). In reviewing the legislative history of § 924(c), the Supreme Court noted that the 1984 amendment to § 924(c) repudiated the results reached in Busic v. United States, 446 U.S. 398 (1980) and Simpson v. United States, 435 U.S. 6 (1978) (holding that a federal court may not impose sentences under both § 924(c) and the weapon enhancement under the armed bank robbery statute, § 2113, based on a single criminal transaction). Id. at 1037. Those holdings, the Court explained, were based on its

conclusion that the unamended text of § 924(c) provided little indication of how Congress intended to mesh that statute with the sentencing enhancement provisions scattered throughout the federal criminal code. Id. However, the 1984 amendment eliminated these ambiguities, the Court noted, because "[a]t that point, Congress made clear its desire to run § 924(c) enhancements consecutively to all other prison terms, regardless of whether they were imposed under firearms enhancement statutes similar to § 924(c)." Id. at 1037-38.

Therefore, based upon the controlling case law on this issue, the Court concludes that Defendant's double jeopardy claim lacks merit. Thus, appellate counsel did not err in failing to raise that claim on direct appeal and Defendant is procedurally barred from raising it at this time.

b. Bailey claim.

The entirety of this claim, which as previously noted was first raised in Defendant's reply brief, is contained in this statement found in Defendant's Reply (#170 at 8-9):

The government obviously misses the thrust of the argument in that firstly the jury was given instructions which at that point in time were valid, however since that time the Supreme Court in Bailey v. United States, 116 S.Ct. 501 (1995). Has clarified the term use of a firearm. [sic] Petitioner moves this court to de novo review the jury instructions to determine whether the sufficiency requirements were met and/or whether the jury could have found guilt, based upon other factors that, under Bailey are erroneous.

Defendant is correct that the Bailey case potentially applies to this case. See United States v. Barnhardt, 93 F.3d 706, 708 (10th Cir. 1996) (holding that the Bailey decision, which establishes a new non-constitutional rule of substantive law, applies retroactively). In Bailey, the United States Supreme Court held that "use" of a firearm for purposes of § 924(c) required more than a showing of mere possession by the defendant; rather, there must be evidence that the defendant "actively

employed" the firearm. Bailey v. United States, 116 S.Ct. at 505. The Court stated that examples of such "active employment" included brandishing, displaying or striking with the firearm. Id. at 508.

Here, however, Defendant was charged in Count Three only with "carrying" a firearm during and in relation to a crime of violence. (#15 at 6.) While the jury instruction defining "use or carrying" of a firearm contains the pre-Bailey language that the government need prove only that the firearm was in the defendant's possession or under his control (#82), this error is not one that in itself "so infected the entire trial that the resulting conviction violates due process." Estelle v. McGuire, 502 U.S. 62, 72 (1991) (quoting Cupp v. Naughten, 414 U.S. 141 (1973)). On the contrary, viewing this instruction in the context of the instructions as a whole as well as the entirety of the trial record, see Cupp, 414 U.S. at 147, the Court concludes that the record contains ample uncontradicted evidence supporting the conclusion that the Defendant indeed carried and used a firearm within the meaning of Bailey.

For example, co-conspirator testimony identified Defendant ("Mickey") as the robber who approached the teller and co-conspirator Harrell. (Tr. of Jury Trial at 420.) Another teller testified that one of the robbers pointed a gun at Harrell (Tr. of Jury Trial at 272-73), and another teller and two of the bank customers testified that one of the robbers had a handgun or pistol in his hands. (Tr. of Jury Trial at 104, 106, 115, 118, 123, and 141). Harrell testified that the robber held a black, rusty automatic and at one point he struck her on the hand with the gun. (Tr. of Jury Trial at 845-848). This evidence, which has Defendant pointing a firearm at the tellers and customers, meets both the "carrying" and the "use" definitions as clarified in Bailey. See United States v. Price, 76 F.3d 526, 529 (3d Cir. 1996) (holding that an erroneous jury instruction on the definition of "use or carry" was harmless error where the fact that co-defendant "both 'used' and 'carried' the firearm within the

statutory meaning is perfectly clear").

This conclusion is also supported by the Tenth Circuit's opinion on direct appeal. While the Tenth Circuit upheld Defendant's conviction on Count Three under the pre-Bailey law requiring merely the "possession" of a firearm in relation to the offense, that Court did conclude that "[t]he evidence shows that Mr. Johnson used a gun during the robbery and that two guns were found in the bag with the stolen money after the robbery." Johnson, 4 F.3d at 915. Thus, the Court concludes that Defendant has failed to establish a valid Bailey claim sufficient to overcome the procedural bar.

c. Sufficiency of the evidence relating to the firearm and the robbery.

Defendant asserts that the government did not prove that the alleged weapon was a firearm within the meaning of 18 U.S.C. § 921, i.e., that it was capable of expelling a projectile, rather than being a starter pistol or replica. (#170 at 9.) He also contends that because the government presented the theory of a "staged" robbery, the offense was not a crime of violence and could not rise to armed robbery, but instead amounted only to bank larceny. (#170 at 10-11.) As discussed below, these arguments are not supported by the relevant law governing these offenses.

A "firearm" for purposes of § 924(c) is defined as (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm." 18 U.S.C. § 921(A)(3) (1991).

The government need not produce a gun at trial in order to prove beyond a reasonable doubt that a gun was used in the commission of a crime; witness identification of the weapon as a firearm is sufficient. See United States v. Hamilton, 992 F.2d 1126, 1129 (10th Cir.1993) (citing United

States v. Gregg, 803 F.2d 568, 571 (10th Cir. 1986)). Here, five witnesses testified that they saw the gun in the bank robber's hands. One witness, who testified that he was about 8-10 feet from the robber, said that it "looked like an army .45." (Tr. of Jury Trial at 118.) Neither at trial nor on appeal did Defendant or any of his co-defendants raise an issue concerning the gun being a "real" gun as opposed to a toy or replica. The jury was correctly instructed as to the definition of a "firearm" for purposes of the offense under § 924(c). (#82).

Accordingly, the Court concludes that the evidence presented at trial clearly supports the jury's implicit finding that Defendant used a "real gun" within the meaning of § 921(a)(3). See United States v. Russell, 109 F.3d 1503, 1505 (10th Cir. 1997). Therefore, Defendant's counsel did not err in failing to raise this issue at trial or on appeal and Defendant has not established cause sufficient to overcome the procedural bar.

Also without merit is Defendant's assertion that the government failed to prove that a firearm was used in connection with a "crime of violence" within the meaning of § 924(c). The term "crime of violence" is defined in § 924(c)(3) as a felony offense that either has as an element the use, attempted use or threatened use of physical force against the person or property of another or that by its nature involves a substantial risk that physical force against the person or property of another may be used in the commission of the offense. Clearly, bank robbery meets this definition because it involves the use or threatened use of force against another's property. See, United States v. Lanzi, 933 F.2d 824, 826 (10th Cir. 1991) (noting that the legislative history refers expressly to the bank robbery statute as one of the federal crimes to which § 924 applies); United States v. Johnson, 962 F.2d 1308 (8th Cir. 1992) (holding that conspiracy to commit bank robbery satisfies the "crime of violence" element of § 924(c)). The jury was properly instructed regarding the definition of a "crime

of violence" (#82), Defendant was convicted of the substantive offense of armed bank robbery in addition to the conspiracy count, and the convictions were upheld on appeal as supported by sufficient evidence. Johnson, 4 F.3d at 915. Defendant fails to cite any authority suggesting that the mere participation of an "inside" person (here, the bank employee Harrell) in the robbery alters the characterization of the offense as a "crime of violence." Thus, defense counsel did not err in failing to raise the nonmeritorious issue, and Defendant is procedurally barred from now presenting it.

2. *Introduction of non-testifying co-defendant's confessions.*

At trial, the government introduced tape-recorded telephone conversations between Monty Wood and co-defendants Nottingham and Carroll which took place after the defendants were indicted and more than a year after the robbery. Defendant here challenges the introduction only of the tape-recorded conversations between Wood and Nottingham. In them, the name "Micky" is mentioned several times and the name "Richard Earl Johnson" is mentioned once. Co-defendant Nottingham testified at trial and was extensively cross-examined by Plaintiff about statements he made during the recorded conversations. The Court admonished the jury to consider the tapes only as they deemed them to be relevant and credible to the case against Nottingham and not as to the other defendants.

Defendant raises three arguments with respect to these tape recorded conversations. First, he contends that they were improperly admitted pursuant to Rule 801(d)(2)(E), Fed. R. Evid., as exceptions to the hearsay rule for co-conspirator's statements because the conspiracy had ended at the time they were recorded. Second, Defendant asserts that the tapes were not authenticated and were illegally edited. Third, Defendant alleges that these tapes' introduction into evidence violates the rule in Bruton v. United States, 391 U.S. 123 (1968), which prevents a non-testifying co-defendant's confession from being introduced as evidence against other defendants.

Addressing each argument in turn, the Court first determines that Defendant's evidentiary argument is without merit. At trial, Defendant's attorney objected to the inclusion of references to "Mickey" on the tapes. (Tr. of Jury Trial at 441, 444-46, 450.) However, the record clearly shows that the Court did not, as Defendant here claims, admit the recordings pursuant to Fed. R. Evid. 801(d)(2)(E) (which provides that "a statement by a coconspirator of a party during the course and in furtherance of the conspiracy" is not hearsay, and is therefore admissible as substantive evidence against all other members of the conspiracy). Indeed, counsel for Plaintiff did not argue that the tapes were admissible as co-conspirators' statements; rather, Plaintiff argued and the Court found that the conversations were admissible pursuant to Rule 804(b)(4) as admissions against interest made by Nottingham which were admitted as evidence against only him. (Tr. of Jury Trial at 438-439.) The Court clearly admonished the jury that the conversations were not to be considered as evidence against any of the other defendants. (Tr. of Jury Trial at 457.) The jury instructions also included a limiting instruction specifying that the audio taped conversations could be considered as evidence only as to the parties engaged in the conversation and not as to other parties mentioned on the tape. (#82). Thus, this first claim of error with respect to the recordings is groundless.

Next, Defendant asserts that the tape recordings were (1) unauthenticated and (2) illegally edited by Wood and his attorney to destroy exculpatory evidence relating to Defendant. These claims are clearly repudiated by the record. Rule 901(a), Fed. R. Evid., generally provides that the authentication, or identification, requirement is "satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." As an example, Rule 901(b)(6)(A) states that telephone conversations may be authenticated by evidence showing that the call was made to the number assigned to a person and that person answered the call.

In this case, the record provides ample evidence supporting the fact that the tapes were, as claimed, recordings of calls made by Nottingham to Wood. Wood's attorney testified that he had the recording device placed on Wood's telephone around June 21, 1991, and that after August 15, 1991 he had the device removed and had his wife transcribe the conversations. He then turned over the tapes and the transcripts to the government. (Tr. of Jury Trial at 209-11.) Monty Wood also testified about the placement of the recording device on his phone and that he turned over the tapes to his attorney's investigator. (Tr. of Jury Trial at 175-77; 189-190; 429-34; 451-52.) Accordingly, the Court concludes that the tapes were properly authenticated.

Defendant's claim that the tapes were illegally edited also fails. The Assistant U.S. Attorney representing the Plaintiff said that the tapes had been edited at her request to delete references to any prior prison records or convictions of "Mickey" or "Jamar." (Tr. of Jury Trial at 448-49.) Thus, any editing was beneficial to Defendant as it removed statements potentially prejudicial to Defendant or co-defendant Carroll. The Court is not persuaded by Defendant's conclusory statement that "the edited portions were extremely relevant in that exculpatory evidence of Petitioner's innocence was deleted and, impeachable evidence relevant to Monty Van Wood had been destroyed by his defense attorney." The Court's review of the tape transcripts indicates that there were nine instances where editing was indicated; the context of the editing is entirely consistent with the government's representations at trial and provides no support for Defendant's unsupported claim that exculpatory material was deleted.

Finally, the Court turns to Defendant's allegation that his rights under the Confrontation Clause were violated by the introduction of the taped conversations between Wood and Nottingham. It is a fundamental principle that "the Confrontation Clause is not violated by admitting a declarant's

out-of-court statements as long as the declarant is testifying as a witness and [is] subject to full and effective cross-examination.' " United States v. Tome, 3 F.3d 342, 352 (10th Cir.1993) (citing California v. Green, 399 U.S. 149, 158 (1970)), rev'd on other grounds, 513 U.S. 150, (1995). The Confrontation Clause only insures the opportunity for cross-examination, see Tome, 3 F.3d at 352 (citing Delaware v. Fensterer, 474 U.S. 15, 20 (1985)), and because the declarant, Charles Nottingham, testified at trial, Defendant was thus afforded the opportunity to cross-examine him. Therefore, this claim is without merit, and Defendant has failed to overcome the procedural bar.

The only other avenue by which Defendant can have these claims reviewed is by showing that a "fundamental miscarriage of justice" will result if the procedural bar is invoked. This exception applies "in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent." Murray v. Carrier, 477 U.S. at 496 (1986). To meet this exception, a defendant must show that the government has convicted the wrong person of the crime such that "it is evident that the law has made a mistake." Sawyer v. Whitley, 505 U.S. 333 (1992). Application of this exception is "rare" and limited to the "extraordinary case." See Schlup v. Delo, 513 U.S. 298, 323-32 (1995).

Defendant does allege that he is actually innocent of the crimes: he claims that he was in Dallas, Texas when the robbery occurred. Therefore, the Court must examine whether this is one of those "extraordinary" cases to which a fundamental miscarriage of justice will occur if the procedural bar is invoked.

"This inquiry involves three prongs: (1) a constitutional violation; (2) a probable effect on the jury's determination; and (3) the conviction of an innocent man." Parks v. Reynolds, 958 F.2d 989, 995 (10th Cir. 1992). "[W]here the defendant shows no cause for failing to raise these claims

earlier, the defendant must show—at the threshold—both a constitutional violation and a colorable showing of factual innocence. Factual innocence must mean at least sufficient claims and facts that—had the jury considered them—probably would have convinced the jury that the defendant was factually innocent." Id.

As discussed above, the Court determined that none of Defendant's allegations of constitutional violation had merit. Thus, Defendant fails to meet the first prong of the inquiry—establishment of a constitutional error—and there is no need to determine whether Defendant's alibi evidence would have probably convinced the jury that Defendant was factually innocent. Accordingly, the Court concludes that this is not one of those "rare and extraordinary" cases where the fundamental miscarriage of justice exception applies, and Defendant remains procedurally barred from having these claims heard on his § 2255 motion.

3. *Ineffective assistance of counsel.*

In his § 2255 motion, Defendant lists eight instances in which he alleges he was denied the effective assistance of counsel:

- 1) Failure to allow Robert Johnson to testify in his own defense.
- 2) Failure to call critical witnesses.
- 3) Failure to read and understand the applicable law relevant to the Bruton rule.
- 4) Failure to request appropriate jury instructions.
- 5) Failure to investigate.
- 6) Compromising Robert Johnson's defense by allowing a hearsay, edited audio tape to be presented to the jury.
- 7) Failure to raise the prejudicial codefendant's hearsay confession on direct appeal.
- 8) Failure to raise the issue of discovery of exculpatory evidence.

As previously noted, to establish ineffective assistance of counsel a defendant must show that his counsel's performance was deficient and that the deficient performance was prejudicial. Strickland v. Washington, 466 U.S. 668, 687 (1984); Osborn v. Shillinger, 997 F.2d 1324, 1328 (10th Cir. 1993). A defendant can establish the first prong by showing that counsel performed below the level expected from a reasonably competent attorney in criminal cases. Strickland, 466 U.S. at 687-88. To establish the second prong, a defendant must show that this deficient performance prejudiced the defense, to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. See also Lockhart v. Fretwell, 506 U.S. 364, 369-70 (1993).

There is a "strong presumption that counsel's conduct falls within the range of reasonable professional assistance." Strickland, 466 U.S. at 688. In making this determination, a court must "judge . . . [a] counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id., at 690. Moreover, review of counsel's performance must be highly deferential. "[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Id. at 689.

The alleged errors listed as (3), (6), and (7) all deal with the tape recorded conversations between Wood and Nottingham, and Wood and Carroll which were introduced as evidence only against Nottingham and Carroll. As noted above, the introduction of the taped conversations did not violate any evidentiary rules or the Confrontation Clause; thus, Defendant's trial and appellate counsel did not provide ineffective assistance of counsel with respect to the introduction of these tapes.

In claim (1), Defendant claims that his attorney refused to let him testify on his own behalf that he had not committed the robbery but was in Dallas with two witnesses on the day of the robbery. Additionally, Defendant asserts that his attorney failed to interview these witnesses, whom Defendant identifies by name, or investigate whether, as Defendant claims, there were at least two individuals also known as "Mickey" in the Tulsa area at the time of the robbery. Defendant claims that his counsel's failure to investigate (claim (5)) or request jury instructions (claim (4)) actually prejudiced his defense. Although Defendant does not elaborate on claim (8) ("failure to raise the issue of discovery of exculpatory evidence"), presumably it also relates to this alibi defense.

In support of his contention that he was denied the opportunity to testify, Defendant states that when he raised the issue, his counsel told him this would open the door for the government to bring up his criminal record and the fact that he was an ex-convict. When Defendant later raised the issue of testifying, his counsel told him he could not testify because his name had not been included on the witness list furnished to the government. Defendant further states that he told counsel he would talk to the judge about allowing him to testify, whereupon his counsel became upset and said that would be improper and would prejudice Defendant. The record, however, does not reflect any attempt by Defendant to talk to the judge or make a *pro se* statement regarding his desire to testify, even at the point when his defense rested.

It is well-established that a criminal defendant has the right to testify at trial. Rock v. Arkansas, 483 U.S. 44 (1987). This federal constitutional right is grounded on due process guarantees of the right to be heard, compulsory process guaranteed under Sixth Amendment, and as a necessary corollary to the Fifth Amendment. Id. at 52-53. However, "[w]hether the defendant is to testify is an important tactical decision as well as a matter of constitutional right." Brooks v.

Tennessee, 406 U.S. 605 (1972); cf. Jones v. Barnes, 463 U.S. 745, 751, (1983) (while acknowledging that defendant has the ultimate authority to decide whether to testify at trial, the Supreme Court maintained the attorney's ultimate control over whether to raise nonfrivolous issues on appeal notwithstanding the defendant's request).

Judicial scrutiny of trial counsel's overall defense strategy, including counsel's advice on the advantages and potential disadvantages of testifying, is subject to a high level of deference. See Strickland, 466 U.S. at 689. Counsel's decisions must be evaluated based upon his perspective at the time they were made. Id. In this case, Defendant fails to overcome the presumption that, under the circumstances, the challenged action—counsel's recommendation to Defendant not to testify—"might be considered sound trial strategy." Id. On the contrary, given Defendant's prior felony convictions, it is quite reasonable for defense counsel to have concluded that the potential negative impact of this impeachment evidence on the jury would far outweigh any benefits gained from Defendant's testifying.

Further, while counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments. Id. at 690. Likewise, whether to call a particular witness is a tactical decision and thus a matter of discretion for trial counsel. United States v. Janoe, 720 F.2d 1156, 1162 (10th Cir. 1983) (citing United States v. Miller, 643 F.2d 713, 714 (10th Cir. 1981)). An attorney's decision not to interview witnesses and to rely on other sources of information, if made in the exercise of professional judgment, is not ineffective counsel. United States v. Glick, 710 F.2d 639, 644 (10th Cir. 1983).

The Court's review of the trial proceedings establishes that the performance of Defendant's attorney was well within the wide range of professionally competent assistance. Defendant's attorney vigorously cross-examined Monty Wood as to his identification of Defendant as the "Mickey" who was involved in the robbery. (Tr. of Jury Trial at 575-609.) Defense counsel also cross-examined most of Plaintiff's witnesses regarding their identification of the robbers. Later, as part of Defendant's case, defense counsel called two witnesses and presented a stipulation which tended to discredit some of Wood's testimony as to his post-robbery dealings with Defendant. It is clear that Defendant's attorney was acting in an adversarial mode by challenging the government's theory that Defendant was involved in the robbery. The Court will not now second-guess defense counsel's strategic decision to not call the two alleged alibi witnesses.

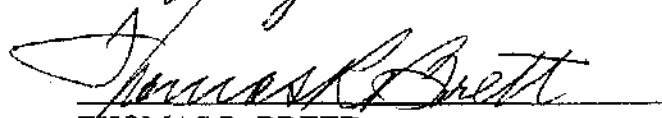
Accordingly, Defendant has failed to persuade the Court that his counsel's performance was outside the realm of a reasonably competent criminal attorney. Strickland, 466 U.S. at 687-88.

CONCLUSION

Defendant's claim that his counsel provided ineffective assistance is without merit. Defendant's remaining claims are procedurally barred. Therefore, the Court concludes that Defendant's motion to vacate, set aside, or correct sentence should be denied.

ACCORDINGLY, IT IS HEREBY ORDERED that Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (docket #155) is **denied**.

SO ORDERED THIS 11th day of May, 1998.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 11 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

GERALD LEE CARROLL,)

Defendant.)

Case No. 91-CR-80-B
(97-CV-382-B)

ENTERED ON DOCKET

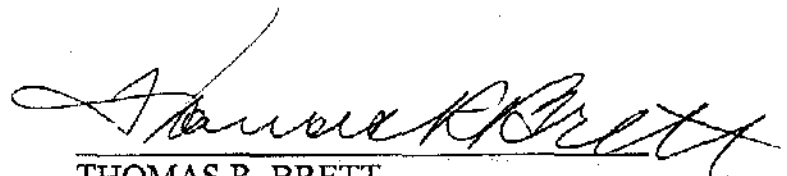
JUDGMENT

DATE MAY 12 1998

This matter came before the Court upon Defendant's motion to vacate, set aside or correct sentence. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant.

DATED this 11th day of May, 1998.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

2/186

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 11 1998

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GERALD LEE CARROLL,

Defendant.

No. 91-CR-80-B
(97-CV-382-B)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE MAY 12 1998

ORDER

Before the Court is the *pro se* Defendant's amended motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Docket #178 and #158 (initial motion)). Plaintiff United States of America has filed its initial response (#167) and amended response brief (#181) and Defendant has filed a rebuttal to those responses (#182). After reviewing the entire record in this case, the Court has determined that an evidentiary hearing is not necessary and that the motion, as amended, lacks merit and should be denied.

BACKGROUND

On August 7, 1991, Defendant was charged in a three-count superseding indictment. Count One charged Defendant and co-defendants Charles Edwin Nottingham, Monty Wood, Robert Johnson, and Dee Dee Romo, also known and referred to hereinafter as Deidre Harrell, with conspiracy to commit armed bank robbery, in violation of 18 U.S.C. § 371. Count Two charged Defendant and his four co-defendants with armed bank robbery, in violation of 18 U.S.C. § 2113(a) and (d) and 18 U.S.C. § 2. Defendant and co-defendant Johnson were charged as principals and co-defendants Nottingham, Wood, and Harrell were charged with aiding and abetting and causing the

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commission of the offense. Count Three charged Defendant and Johnson with carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c).

These charges arose out of the June 22, 1990 robbery of the Cimarron Federal Savings and Loan Association ("Cimarron bank") in Tulsa. Shortly after his arrest on the initial indictment filed in June, 1991, co-defendant Wood, on the advice of his attorney, Ronald Mook, approached the government and indicated his willingness to cooperate. The government did not offer Wood a deal at that time; nevertheless, Mook and Wood decided to tape record Wood's telephone calls with other members of the conspiracy. Wood subsequently pled guilty to conspiracy to rob a bank (Count Two) and, in accordance with the plea agreement, testified against Defendant and the other co-defendants at trial. The tapes of telephone conversations between Wood and Nottingham, and Wood and Defendant, recorded between June 21, 1991 and August 15, 1991, were played for the jury and introduced into evidence.

Wood testified that he was friends with co-defendant Harrell, who was employed as a vault teller at the Cimarron bank. Harrell told Wood how to go about robbing this particular bank. Wood, in turn, discussed this information with co-defendant Nottingham, who said he knew two people who could do the robbery, Mickey and Jamar. Wood identified Jamar as Defendant, and Mickey as co-defendant Johnson. As planned, Defendant and Johnson entered the bank during the lunch hour and Johnson bypassed the teller windows and approached Harrell in the vault area while Defendant stayed in the back of the bank. Johnson directed Harrell to fill up a pillowcase with money and at one point Johnson hit Harrell's hand with the gun.

After the robbery, Nottingham and Kenneth Thompson, who testified for the government at trial, arrived at Wood's girlfriend's apartment with a duffel bag containing approximately \$10,000 and two guns, a .38 and a .45 caliber handgun.

The jury found Defendant guilty of all charges. On January 8, 1992, Defendant was sentenced to 180 months imprisonment with five years supervised release and ordered to pay restitution of \$7,000.00.

Defendant appealed, raising the following four grounds:

- (1) Sufficiency of the evidence in support of the charge of conspiracy (Count One);
- (2) Sufficiency of the evidence in support of the charge of bank robbery (Count Two);
- (3) Sufficiency of the evidence in support of the charge of possession of a firearm during commission of a felony (Count Three); and
- (4) The Court's determination that the Government had met its burden sufficient to permit the introduction of co-conspirator hearsay statements.

Defendant's conviction was affirmed by the Tenth Circuit. United States v. Carroll, 4 F.3d 904 (10th Cir. 1993). Defendant's petition to the United States Supreme Court for writ of certiorari was denied on February 22, 1994. 510 U.S. 1123 (1994). Defendant then filed this motion for collateral relief on April 22, 1997, amending it by leave of court granted February 23, 1998.

Defendant raises 16 grounds of error in his amended motion. Nine of those grounds relate to the legality of the tape recordings introduced at trial; the tenth ground claims ineffective assistance of counsel. The remaining six grounds relate to the sufficiency of the indictment, the creditability of Monty Wood, and the failure of the Court to properly instruct the jury.

Specifically, Defendant's amended motion places the following issues before the Court:

- (1) That the wiretap was illegal interception under Title III, of the Omnibus Crime Control & Safe Streets Act. Section 2515 & 2518 (10)(a)(i).
- (2) A common user of a girlfriend's phone does not have the authority to allow an attorney and Investigator to place an illegal recording device on the phone.
- (3) A non-subscriber of the intercepted line gave permission to an attorney to place a recording device on the phone.
- (4) The attorney failed to file an Application with the the [sic] Court for required authorization to place a recording device on the phone.
- (5) The attorney failed to follow the requirements under Section 2518(8)(a) of the Omnibus Crime Control Act, that the tape recordings be IMMEDIATELY returned and sealed.
- (6) The attorney failed to provide 'ANY EXPLANATION' for the absence of a timely seal before the recordings were used.
- (7) Custody [sic] of the recordings were never properly established.
- (8) The legality of an interception is determined by the purpose.
- (9) The mandate and / or requirements that applies to the transcribing of the tape was violated.
- (10) His trial counsel was ineffective because he failed to investigate the legality of the wiretap as to the factors cited in the first nine grounds.
- (11) That the Grand Jury (DID NOT) have before them sufficient information to issue an Indictment against Petitioner.
- (12) That the Grand Jury (DID NOT) have before them reliable information to issue an Indictment against Petitioner.
- (13) That the Court (FAILED) to meet its burden of proof that the Informant Monty Wood, was credible as a witness and his testimony reliable . . . as the Constitution Requires.

- (14) That the Court (FAILED) to properly instruct the jury as to the credibility of the Informant Monty Wood, and to properly instruct the jury as to the reliability of his testimony.
- (15) That the Court (FAILED) to instruct the jury of the Informant Kenneth Thompson, drug use . . . as it was know [sic] that he was a drug addict.
- (16) That the Court (FAILED) to instruct the jury off/on the potential for self-serving testimony of the Informant(s) . . . one who was an admitted liar and testified that he had made a deal (Monty Wood) . . . and one who was a drug addict, who also made a deal and/or expected something for his testimony (Kenneth Thompson).

In its response, the government maintains that Defendant's claims are procedurally barred because they were not raised on appeal. Addressing the merits of claims (1) through (9), the government contends that the recordings were not unlawful because, pursuant to 28 U.S.C. §2511 (c) and (d), Mr. Wood was a party to the conversations and consented to their recording. Further, the government asserts that any issue relating to the sufficiency of the indictment became moot when Defendant was convicted after a jury trial. Lastly, the government contends that the jury instructions given by the Court adequately cover the issues raised by Defendant as to witnesses' credibility.

In response to Plaintiff's raising the issue of procedural bar, Defendant states that he presented all these grounds to his trial and appeal attorneys but could not get them to raise these issues.

ANALYSIS

A. Defendant's claims (1)-(9) and (11)-(16) are procedurally barred.

It is well settled that "[s]ection 2255 motions are not available to test the legality of matters which should have been raised on direct appeal." United States v. Warner, 23 F.3d 287, 291 (10th Cir. 1994) (citation omitted). Consequently, a defendant may not assert issues which were not raised in his direct appeal unless he establishes cause for his default and prejudice resulting therefrom, or

can show that a fundamental miscarriage of justice will occur if his claim is not addressed. United States v. Cook, 45 F.3d 388, 392 (10th Cir.1995). The procedural default rules developed in the context of habeas corpus cases apply with equal force in § 2255 cases. United States v. Frady, 456 U.S. 152, 166-69 n. 15 (1982).

The "cause" standard requires a defendant to show that some objective factor external to the defense impeded his ability to raise an issue on direct appeal. See Murray v. Carrier, 477 U.S. 478, 488 (1986). Examples of such external factors include the discovery of new evidence or a change in the law. Id. Ineffective assistance of counsel is another example of an external factor that may constitute "cause" excusing a procedural default. Cook, 45 F.3d at 392. As for prejudice, a defendant must show "'actual prejudice' resulting from the errors of which he complains." United States v. Frady, 456 U.S. 152, 168 (1982). The "fundamental miscarriage of justice" exception requires a petitioner to demonstrate that he is "actually innocent" of the crime of which he was convicted. McCleskey v. Zant, 499 U.S. 467, 494 (1991).

Defendant alleges that he asked his counsel to raise these issues but counsel would not do so. Therefore, construing Defendant's *pro se* motion liberally as required by Haines v. Kerner, 404 U.S. 519, 520 (1972), the Court examines whether Defendant's allegation of ineffective assistance of counsel constitutes "cause" sufficient to overcome the procedural bar as to his claims.

To establish ineffective assistance of counsel a defendant must show that his counsel's performance was deficient and that the deficient performance was prejudicial. Strickland v. Washington, 466 U.S. 668, 687 (1984). Although the Strickland test was formulated in the context of evaluating a claim of ineffective assistance of trial counsel, the same test is applied in assessing the ineffectiveness of appellate counsel. United States v. Cook, 45 F.3d at 392.

Because the procedural bar is imposed due to Defendant's failure to raise his claims on direct appeal, the Court must examine the merits of the issues omitted upon appeal. *Id.* If the omitted issues are without merit, counsel's failure to raise them does not amount to constitutionally ineffective assistance of counsel. *Id.* at 393.

I. The tape recordings (Grounds 1-9).

Defendant's claims relate to the tape recorded conversations between Defendant and Monty Wood. On these tapes, Defendant calls Wood on two occasions in the months immediately following the filing of the initial indictment (about a year after the robbery), and speculates about who might be talking to the authorities. Counsel for Defendant objected at trial and on appeal that the introduction of these taped conversations were made after Defendant's right to counsel had attached and thus violated the Sixth Amendment. After an evidentiary hearing at which Wood and his attorney testified, the Court found that Defendant's right to counsel had attached; however, it determined that Wood was not acting as a governmental agent and thus the Sixth Amendment was not violated. The Tenth Circuit affirmed this finding. 4 F.3d at 912.

Defendant now claims that the recorded conversations were illegal wiretaps pursuant to the provisions of 18 U.S.C. §§ 2515 and 2518(10)(a)(1). Plaintiff counters that these statutory provisions were not violated because Monty Wood was a party to the conversations and consented to their recording and disclosure.

Title 18 U.S.C. §§ 2510-2521, entitled "Wire and Electronic Communications Interception and Interception of Oral Communications," generally protects individuals from unauthorized wiretapping. The warrantless interception of telecommunications is made a criminal offense under § 2511, as well as the basis for a suit in civil damages under § 2520. Additionally, § 2515 provides

that no part of the contents of any such wrongfully intercepted communication may be received in evidence in any trial or proceeding. Section 2518(10)(a) provides that a party may move to suppress the contents of a communication on the ground that it was unlawfully intercepted.

There are, however, exceptions to the general prohibition against warrantless interceptions of wire or oral communications. One such exception provides that "it shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication *where such person is a party to the communication or where one of the parties to the communication has given prior consent* ... unless such communication is intercepted for the purpose of committing any criminal or tortious act...." 18 U.S.C. 2511(2)(d) (emphasis added).

Here, Monty Wood clearly gave his consent for his attorney to place the recording device on his phone. When asked whose decision it was to tape the conversations, Wood testified that it was "[m]ine and my attorney's." (Tr. of Jury Trial at 177.) Thus, because one party to the telephone conversations, i.e., Wood, consented to their interception/recording, the recordings came within the provisions of § 2511(2)(d). Therefore, the warrant requirements and other statutory safeguards of 18 U.S.C. §§ 2510-2521 did not apply to the recording of these communications, and their disclosure and use against Defendant at trial did not violate the law. United States v. Davis, 780 F.2d 838, 846 (10th Cir. 1985); see generally, Glenn A. Guarino, Annotation, Interception of Telecommunications By or With Consent of Party as Exception, Under 18 USCA § 2511(2)(c) and (d), to Federal Proscription of Such Interceptions, 67 A.L.R. Fed. 429 (1984).

Because Defendant's claims (1)-(9) relating to the tape recorded conversations are without merit, his attorney did not err in failing to raise them on appeal, and Defendant has failed to show cause sufficient to overcome the procedural bar.

The only other avenue by which Defendant can have this claim reviewed is by showing that a "fundamental miscarriage of justice" will result if the procedural bar is invoked. This exception applies "in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent." Murray v. Carrier, 477 U.S. at 496 (1986). Defendant does not claim that he is actually innocent of the charges. Therefore, these claims are procedurally barred.

2. *Claims relating to the grand jury proceedings.*

In claims (11) and (12), Defendant contends that the grand jury did not have sufficient and reliable information before them to issue the indictment. Defendant states that the informant, Monty Wood, did not have personal knowledge of the crimes and did not personally observe the crimes alleged in the indictment. Defendant did not challenge the indictment prior to trial or on appeal. Plaintiff responds that Defendant's objections concerning the nature and sufficiency of the evidence forming the basis of the grand jury's indictment are mooted by the trial jury's guilty verdict.

Defendant's claims clearly fail insofar as they challenge the sufficiency of an indictment based upon hearsay evidence. It is well established that grand jury proceedings are not subject to the usual evidentiary rules, and hearsay testimony alone may form the basis of an indictment. Costello v. United States, 350 U.S. 359, 364 (1956); United States v. Rogers, 652 F.2d 972, 975 (10th Cir. 1981). Further, the Court agrees with Plaintiff that any technical or procedural violation affecting the grand jury's finding of probable cause is harmless error after a trial jury has found Defendant guilty as charged beyond a reasonable doubt. United States v. Mechanik, 475 U.S. 66, 942 (1986). Therefore, the reliability of the evidence presented to the grand jury is immaterial because Defendant was convicted after a full trial at which all the evidentiary safeguards applied, see Costello, 350 U.S.

at 364, and defense counsel did not err in failing to challenge the sufficiency of the indictment. Accordingly, claims (11) and (12) are procedurally barred.

3. *Credibility of informant Wood.*

In Claim (13), Defendant contends that "the Court failed to meet its burden of proof that the informant Monty Wood was credible as a witness and his testimony reliable." The Court construes this claim as a challenge to Wood's credibility as well as to the sufficiency of the evidence supporting Defendant's conviction. After review of the record and as discussed below, the Court determines that this ground for relief is without merit.

Plaintiff's examination of Wood was naturally subject to defense counsels' evidentiary objections, such as an objection under Rule 602, Fed. R. Evid. (lack of personal knowledge). After his direct testimony, Monty Wood was vigorously cross-examined by all of his four co-defendants' attorneys, including Defendant's own attorney. (Tr. of Jury Trial at 548-622; 628-637.) The several defendants attempted to present many challenges to Wood's reliability and credibility during their cross-examinations; however, the credibility to be given a witness' testimony is a matter ultimately to be decided by the jury. On appeal, the Tenth Circuit held that the evidence at trial—consisting largely, but by no means wholly, of Wood's testimony—was sufficient to support Defendant's convictions. 4 F.3d at 915.

Accordingly, the Court concludes this claim is without merit and Defendant has not established cause sufficient to overcome the procedural bar.

4. *Jury instructions.*

Defendant claims that the Court failed to properly instruct the jury as to the credibility, reliability, and potentially self-serving nature of Monty Wood's testimony (claims (14 and 16)), and

failed to instruct the jury as to informant Kenneth Thompson's drug use and expectation of a benefit for testifying (claim (15) and 16)). Plaintiff responds that the jury was adequately instructed as to these matters.

A defendant challenging jury instructions must show that any erroneous instructions in themselves "so infected the entire trial that the resulting conviction violates due process." Estelle v. McGuire, 502 U.S. 62, 72 (1991) (quoting Cupp v. Naughten, 414 U.S. 141 (1973)). Defendant fails to persuade the Court that the jury instructions were incomplete or contained mistakes that infected the entire trial with "error of constitutional dimensions." Frady, 456 U.S. at 170.

As Plaintiff points out, the jury instructions in this case included instructions as to witnesses and plea agreements, personal advantage, impeachment by conviction of a felony and by inconsistent statements. (#82.) These instructions adequately summarized the law as it related to evidence presented at trial. The Court notes that both Monty Wood and Kenneth Thompson were extensively cross-examined by defense counsel. Evidence concerning their felony convictions and inconsistent statements was presented, and Thompson testified that he had a felony conviction for possession of cocaine. Defendant's allegation that Thompson was a "known drug addict" was not the subject of evidence presented at trial, and thus would not have been the proper subject of a jury instruction.

Accordingly, because Defendant fails to show that the jury instructions were erroneous, his counsel was not deficient in failing to object to them at trial or on appeal, and Defendant has not shown cause sufficient to overcome the procedural bar.

B. Defendant was not subject to ineffective assistance of counsel (claim (10)).

Lastly, Defendant claims that his counsel was ineffective for failing to investigate and object to the tape recordings as illegal wiretaps. As previously noted, to establish ineffective assistance of

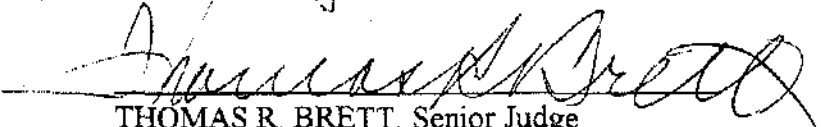
counsel a defendant must show that his counsel's performance was deficient and that the deficient performance was prejudicial. Strickland v. Washington, 466 U.S. 668, 687 (1984); Osborn v. Shillinger, 997 F.2d 1324, 1328 (10th Cir. 1993). As discussed above, the Court previously determined that the tape recorded conversations were not illegal wiretaps and were properly introduced at trial. Thus, Defendant's attorney did not err in failing to object to the tape recordings on the grounds listed by Defendant.

CONCLUSION

Defendant's claim that his counsel provided ineffective assistance is without merit. Defendant's remaining claims are procedurally barred. Therefore, the Court concludes that Defendant's motion to vacate, set aside, or correct sentence should be denied.

ACCORDINGLY, IT IS HEREBY ORDERED that Defendant's amended motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (docket #178 and #158) is denied.

SO ORDERED THIS 11 day of May, 1998.


THOMAS R. BRETT, Senior Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

UNITED STATES OF AMERICA,)

MAY 11 1998

Plaintiff,)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

vs.)

Case No. 91-CR-80-B
(97-CV-222-B)

ROBERT EARL JOHNSON,)

Defendant.)

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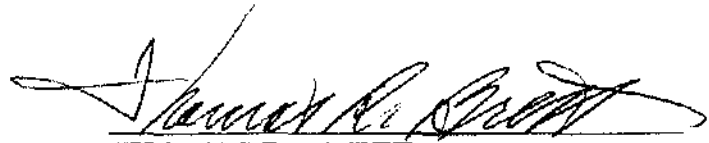
DATE MAY 12 1998

J U D G M E N T

This matter came before the Court upon Defendant's motion to vacate, set aside or correct sentence. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant.

DATED this 12th day of May, 1998.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

2/184

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 11 1998

UNITED STATES OF AMERICA

Plaintiff,

vs.

GUESSINIA VERNERS, a/k/a
GUESSINIA HOLLAND,

Defendant.

Phil Lombardi, Clerk
U.S. DISTRICT COURT

No. 93-CR-1-C

97CV1126C

ORDER

ENTERED ON DOCKET

MAY 12 1998

Currently pending before the Court is a motion filed by defendant Guessinia Vernal seeking to vacate, set aside, or correct her sentence, pursuant to 28 U.S.C. § 2255.

On February 3, 1993, Vernal was named in a three-Count Superseding Indictment for violations of controlled substance laws. On October 21, 1993, a jury convicted Vernal of Count One, possession of cocaine base with intent to distribute and, aiding and abetting, in violation of 21 U.S.C. §§ 841(a)(1), 860(a), and 18 U.S.C. § 2; and, Count Three, establishment of manufacturing operations, and aiding and abetting, in violation of 21 U.S.C. § 856(a)(1) and 18 U.S.C. § 2. On January 7, 1994, Vernal was sentenced to 151 months imprisonment on Counts One and Three, to run concurrently. Vernal additionally was sentenced to a 10 year period of supervised release. Vernal's conviction for aiding and abetting was affirmed on appeal, but her substantive convictions were reversed. U.S. v. Vernal, 53 F.3d 291 (10th Cir.1995). On September 11, 1995, Vernal was resentenced to 120 months imprisonment with a 5 year period of supervised release to follow. Vernal's sentence was affirmed on appeal. U.S. v. Vernal, 103 F.3d 108 (10th Cir.1996).

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On December 22, 1997, Verner's present § 2255 motion was filed. Verner moves this Court to vacate, set aside, or correct the sentence imposed upon her alleging various claims of ineffective assistance of counsel stemming from the circumstance surrounding the removal and replacement of a juror prior to deliberations. After the close of evidence, but prior to entering into deliberations, a juror, Joseph Burden, informed the Foreperson that he wished to be removed from the panel because he recognized Verner from his "neighborhood" and that he was afraid of possible reprisals against his family as a result of his jury service. The Court advised all parties of the potential contamination, conferred with counsels, and then inquired into the situation. Meanwhile, Verner's counsel apprised her of the situation and advised her that, in his professional judgment, she should move for mistrial. Verner however conferred with her co-defendant (and son) and expressly informed counsel and the Court that she did not wish to move for a mistrial. Ultimately, Burden was replaced and the jury proceeded to the verdict finding Verner guilty.

Typically, "§ 2255 is not available to test the legality of matters which should have been raised on appeal." U.S. v. Walling, 982 F.2d 447, 448 (10th Cir.1992). A failure to raise an issue on direct appeal acts as a bar to raising the issue in a § 2255 motion, unless Verner can show cause and actual prejudice, or can show that a fundamental miscarriage of justice will result if her claim is not addressed. U.S. v. Allen, 16 F.3d 377, 378 (10th Cir.1994). This procedural bar applies to collateral attacks on a defendant's sentence, as well as her conviction. Id. Since the government raised this procedural bar in the instant case, this Court must enforce it and hold Verner's claims barred unless cause and prejudice or a miscarriage of justice is shown. Id.

However, "while ordinarily the procedural bar rule . . . applies to section 2255 proceedings . . . it does not apply to ineffective assistance of counsel claims." U.S. v. Galloway, 56 F.3d 1239,

1241 (10th Cir. 1995)(citations omitted). Thus, in order to overcome the procedural bar, Verners relies upon the well-established exception, and now the universal claim, of ineffective assistance of counsel. A claim of ineffective assistance of counsel requires that Verners satisfy the rigid standard contained in Strickland v. Washington, 466 U.S. 668 (1984). The Supreme Court in Strickland held that a claim of ineffective assistance of counsel has two components. First, Verners must show that his attorney "made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." Id. at 687. "The proper standard for attorney performance is that of reasonably effective assistance." Id. Therefore, to succeed, Verners must show that his counsel's performance fell below an objective standard of reasonableness. Furthermore, Verners must show that "the deficient performance prejudiced the defense." Id. However, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance . . ." Id. at 689. For the reasons stated below, the Court concludes that Verners failed to satisfy the Strickland standard for demonstrating ineffective assistance of counsel.

Verners first asserts that her trial counsel Ron Daniels provided ineffective assistance by failing to advise her that Burden had communicated his fears to the jury panel. Verners then recites the facts of the case, directs the Court to U.S. v. Davis, 60 F.3d 1479 (10th Cir. 1995), and argues that Burden's communication was an external influence on the panel and presumptively prejudicial. Thus citing Chapman v. California, 386 U.S. 18 (1967); U.S. v. Scisum, 32 F.3d 1479 (10th Cir. 1994); and, U.S. v. Thompson, 908 F.2d 648 (10th Cir. 1990) Verners contends that the government failed to meet its heavy burden of showing that this communication was not prejudicial.

The Court initially notes that, while Verners characterizes this argument as being based on an ineffective assistance of counsel claim, she seemingly raises an issue, *i.e.*, the government failing

to meet its burden, which should have been raised on direct appeal. Further, she does not allege any prejudice, e.g., that she would have proceeded any differently, or explain how the government's burden has any connection to her ineffective assistance of counsel claim. In any event, Verners' argument is without merit. A mere recitation of the facts and conclusory allegations alone do not constitute grounds for relief. See Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). Moreover, every case Verners cites for her proposition involves scenarios in which defendant's counsel made a motion for mistrial or a new trial. By contrast, Verners expressly asked that no motion for mistrial be raised after conferring with Daniels and being queried by the Court. Trial Transcript, October 20, 1993, p. 441. The record further indicates that Daniels advised Verners that he thought it best to move for a mistrial and that Verners expressly instructed him not to make such a motion. Id. at 434. In light of the foregoing discussion, the Court denies the present claim.

Verners next challenges the actions of her trial attorney arguing that Daniels failed to request an adequate inquiry into the effects of Burden's fears. Verners cites two cases originating in the Third Circuit and, after discussing them, concludes that "counsel's failure to object to the inadequate jury inquiry resulted in prejudice to Petitioner . . . due to a conviction by a contaminated jury. Again, Verners merely makes conclusory allegations which completely miss the mark.¹ In both cases cited by Verners, the Third Circuit found each court's respective inquiries, after motions for mistrial were lodged, inadequate necessitating a new trial. Conversely, the record in this case clearly illustrates counsel's advice to move for a mistrial and the Court's concern and reluctance to allow the case to

¹ The Court notes that Verners present argument presents a paradox. She argues that counsel failed to object to the Court's inquiry, but fails to explain to what end as the remedy for an inadequate inquiry would be a new trial to which she expressly objected in that she opposed any motion for mistrial.

proceed in the face of both defendants' insistence that nothing impede the trial's expedient conclusion. However, the Court simply cannot and will not act as defendant's counsel. See Bellmon, at 1110. Indeed, the Court noted that, had a mistrial been ordered without Verners' consent, jeopardy would have attached and a new trial barred. See Earnest v. Dorsey, 87 F.3d 1123, 1128 (10th Cir. 1996), cert. denied, 117 S.Ct. 527 (1996). Hence, it was necessary for the Court to proceed to the verdict, given Verners' adamant stance against a mistrial. Accordingly, Verners' instant challenge is denied.

As her next grounds for relief, Verners complains of ineffective assistance of counsel alleging that her attorney failed to move for a mistrial. Verners asserts that she followed her co-defendant's advice not to move for a mistrial and then argues that counsel should not have allowed her to "make a highly calibrated legal decision all on her own." Rather, counsel should have moved for a mistrial, notwithstanding the fact that she had been examined and found competent to stand trial. Verners further argues, without explanation, that "certain decisions . . . only need be made by counsel." Nonetheless, there is no substance to be found in this argument. True, counsel must zealously represent his client, but this does not include making motions over the client's objections. The record clearly shows that Daniels believed that a motion for mistrial was warranted and that Verners rejected that very advice and insisted that the proceedings continue without further delay. Trial Transcript, at 434. With this in mind, the Court concludes that Verners could not have suffered prejudice due to counsel's actions and further denies Verners' present claim as wholly frivolous and without merit.

Verners next attacks her trial counsel's performance in that he failed to fully apprise her of the extent of Burden's comments to the panel thereby rendering her "waiver of a mistrial" invalid. Verners asserts that her "waiver" was not knowingly and intelligently made as counsel did not fully

explain the circumstances. Verners further asserts that she would have allowed counsel to move for mistrial, but for the lack of a full explanation, and concluded that the decision not to move for mistrial was solely counsel's. The record however simply does not support this proposition. Rather, the record indicates Verners' counsel's concern for the situation and that a motion for mistrial was a proper and necessary remedy. Id. Thus, considering the foregoing and that Strickland directs the Court to indulge in a strong presumption in favor of effective assistance, the Court denies the instant claim.

In her final challenge, Verners alleges ineffective assistance of counsel on the part of her appellate counsel, C.W. Hack, in that he did not raise each "dead bang winner" contained in her present section 2255 motion. Specifically, Verners alleges that counsel "should have raised the issues in 'Errors, Acts and Omissions 1-4'." [sic] Even being that Mr. Hack would have had to label himself and Mr. Daniels as deficient counsel." However, in light of the previous discussion, the Court finds that Verners was afforded highly competent legal advice at each step in the proceedings. Indeed, Verners' substantive convictions were reversed and she received the benefit of a lower sentence on remand to this Court. Furthermore, ineffective assistance of counsel claims "should be brought in collateral proceedings, not on direct appeal. Such claims brought on direct appeal are presumptively dismissable, and virtually all will be dismissed." Galloway, at 1240 (citations omitted). Moreover, failure to raise meritless claims does not give rise to a claim for ineffective assistance of counsel. See Banks v. Reynolds, 54 F.3d 1508, 1515 (10th Cir. 1995).

As a final matter, the Court denies Verners' request for an evidentiary hearing, pursuant to Rule 8 of the Rules Governing Section 2255 Proceedings. The Court finds that an evidentiary hearing is unnecessary as each of Verners' claims have been individually addressed and summarily denied.

In sum, Verners' motion is denied as she has completely failed to show any prejudice, or show that counsel acted in anything but a professional and competent manner. Verners simply has not presented any evidence of prejudice as she has failed to even allege that she would have proceeded in a different manner or that she would have been found not guilty in a subsequent trial but for the actions of counsel. Essentially, Verners is claiming ineffective assistance of counsel in that she should have not been allowed to make the decision to "waive a motion for mistrial." However, Verners has no one to blame but herself. The record is replete with instances of counsel and the Court inquiring as to whether she wanted to move for a mistrial. Verners simply cannot state a colorable claim for ineffective assistance of counsel because Daniels allowed her to make a knowing and informed decision not to move for a mistrial in accordance with her son's wishes.

Accordingly, Verners' motion to vacate, set aside, or correct sentence is hereby DENIED.

IT IS SO ORDERED this 11 day of May, 1998.



H. Dale Cook
Senior United States District Judge

FILED

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

MAY 11 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-164-001-C

ENTERED ON DOCKET

RONALD WAYNE POLLARD
 Defendant.

DATE 5/12/98

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, RONALD WAYNE POLLARD, was represented by Kurt G. Glassco.

On motion of the United States the court has dismissed Counts 2, 3, & 4 of the Indictment.

The defendant pleaded guilty February 1, 1998, to Count 1 of the Indictment. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
8 USC 371	Conspiracy to Transport Converted Goods in Interstate Commerce	12/31/96	1

As pronounced on May 6, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 11 day of May, 1998.



The Honorable H. Dale Cook
 United States District Judge

Defendant's SSN: 446-68-6850

Defendant's Date of Birth: 05/19/65

Defendant's residence and mailing address: 1803 N. Main, Owasso OK 74059

United States District Court
 Northern District of Oklahoma } SS
 I hereby certify that the foregoing
 is a true copy of the original on file
 in this court.

Phil Lombardi, Clerk
 By B. M. Cullough
 Deputy

Defendant: RONALD WAYNE POLLARD
Case Number: 97-CR-164-001-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 5 months.

The Court makes the following recommendations to the Bureau of Prisons: It is recommended that the Turley Community Sanction Center, Tulsa, Oklahoma be designated as the place of confinement.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 9:00 a.m. on June 1, 1998.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: RONALD WAYNE POLLARD

Case Number: 97-CR-164-001-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall be placed on home detention to include electronic monitoring for a period of 5 months, to commence within 72 hours of release from imprisonment. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: RONALD WAYNE POLLARD
Case Number: 97-CR-164-001-C

FINE

The defendant shall pay a fine of \$ 500, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: RONALD WAYNE POLLARD
Case Number: 97-CR-164-001-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	11
Criminal History Category:	II
Imprisonment Range:	10 months to 16 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 2,000 to \$ 20,000
Restitution:	\$ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by application of the guidelines.

BTJ

FILED

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

MAY 11 1998

Phil Lombardi, Clerk
 U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-176-001-C

ENTERED ON DOCKET

MARCUS GILL
 Defendant.

DATE 5/12/98

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, MARCUS GILL, was represented by Robert Nigh, Jr..

On motion of the United States the court has dismissed Counts 1, 2, 17-18, 21-22, 27-33, 35-36, and 41 of the Superseding Indictment.

The defendant pleaded guilty to Counts 34 & 42 of the Superseding Indictment, February 19, 1998. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 924(c)(1)	Possession of a Firearm During Commission of a Violent Crime and Aiding and Abetting	10/29/97	34
18 USC 924(c)(1)	Possession of a Firearm During Commission of a Violent Crime and Aiding and Abetting	11/19/97	42

As pronounced on May 6, 1998, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 200, for Counts 34 & 42 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 11 day of May, 1998.


 The Honorable H. Dale Cook
 United States District Judge

Defendant's SSN: 499-78-3389

Defendant's Date of Birth: 10/28/75

Defendant's residence and mailing address: 500 S. Denver, Tulsa OK 74103

United States District Court
 Northern District of Oklahoma } ss
 I hereby certify that the foregoing
 is a true copy of the original on file
 in this court.

Phil Lombardi, Clerk

By 
 Deputy

Defendant: MARCUS GILL
Case Number: 97-CR-176-001-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 300 months; 60 months as to Count 34, and 240 months as to Count 42, said terms to run consecutively, each with the other.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: MARCUS GILL
Case Number: 97-CR-176-001-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years as to each count, said terms to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgment shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: MARCUS GILL
Case Number: 97-CR-176-001-C

RESTITUTION AND FORFEITURE**RESTITUTION**

The defendant shall make restitution in the total amount of \$15,954.02. Interest on restitution is waived.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>			<u>Amount of Restitution</u>
Jamil's Steak House Attn: Tyrone Elias 2833 E. 51st Street Tulsa, OK 74105	\$800.00	Diamond Jack's 3609 E. 51st Street Tulsa, OK 74135	750.00
Grandy's 997 Grandy's Lane Lewisville, TX 75067	1,392.00	Little Caesar's Pizza 201 N. Mission Sapulpa, OK 74066	509.00
Ricardo's Attn: Richard Hunt 5629 E. 41st Street Tulsa, OK 74135	246.40	Pizza Hut 1907 S. Harvard Tulsa, OK 74112	1,050.00
Subway Attn: Julia Kern 4603 E. 60th Street Tulsa, OK 74135	158.88	Eggroll Express 5015 S. Sheridan Tulsa, OK 74145	98.84
Braum's Ice Cream and Dairy Stores, Attn: Bill Pendergraft P.O. Box 25429 Oklahoma City, OK 73125	723.88	Papa John's Pizza 2802 E. 11th Street Tulsa, OK 74104	981.48
Taco Mayo 2819 S. Harvard Tulsa, OK 74135	203.59	Domino's Pizza Attn: Scott Driver 2604 S. Harvard Tulsa, OK 74135	1,272.25
Dustyn W. Bell 11211 S. Erie Tulsa, OK 74133	200.00	Blimpie Sandwich Shops 8222 S. Lewis Ave Tulsa, OK 74137	236.00
Subway 11607 E. 31st Street Tulsa, OK 74146	199.00	Wendy's 10152 E. 31st Street Tulsa, OK 74129	3,000.00
Payless Shoe Stores 2157 S. Sheridan Road Tulsa, OK 74114	1,047.54	Farmer's Insurance Group Kansas City Com'l Claims Claim#: P.O. Box 25941 Shawnee Mission, KS 66225	1,425.00

Defendant: MARCUS GILL
Case Number: 97-CR-176-001-C

RESTITUTION AND FORFEITURE**RESTITUTION CONT**

Bill & Ruth's Sandwich Shop Attn: Zouhir A. Hamed 1322 E. 41st Street Tulsa, OK 74104	525.00	Sarah Pickett 7915 S. Yale, Apt. D Tulsa, OK 74136	189.00
Farmer's Insurance Group Kansas City Com'l Claims Claim#:CS013426 P.O. Box 25941 Shawnee Mission, KS 66225	946.16		

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payees.

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release, except that no further payment shall be required after the sum of the amounts actually paid by all defendants has fully covered the compensable injury.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: MARCUS GILL
Case Number: 97-CR-176-001-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	n/a	
Criminal History Category:	n/a	
Imprisonment Range:	60 months	Ct. 34
	240 months	Ct. 42
Supervised Release Range:		
Fine Range:	\$ 0 to \$ 250,000	
Restitution:	\$ 15,954.02	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

BJs

IN THE UNITED STATES DISTRICT COURT FOR THE **F I L E D**
NORTHERN DISTRICT OF OKLAHOMA

APR 29 1998

UNITED STATES OF AMERICA,)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Plaintiff,)

vs.)

No.96-CR-18-C - 98CV257C

No.96-CR-154-C - 98CV266C

TRACY ALAN BAKER,)

Defendant.)

ENTERED ON DOCKET

DATE MAY 01 1998

ORDER

Currently pending before the Court is defendant Tracy Alan Baker's motion seeking to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255.

On May 2, 1995, Baker was named in a one-Count indictment, issued by the United States District Court for the Northern District of Georgia, for possession of a firearm after former conviction of a felony, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924(e)(1). On February 8, 1996, this Court issued a one-Count Indictment charging Baker with same (96-CR-18-C), which he pleaded guilty to on July 8, 1996. The Northern District of Georgia case (96-CR-154-C) was transferred to this Court on October 21, 1996, and Baker pleaded guilty to the one-Count on November 5, 1996. On January 7, 1997, Baker was sentenced to 180 months imprisonment, on each Count, to run concurrently, four years supervised release, \$2,000 fine, and ordered to pay two \$50 special assessments. Baker appealed to the Tenth Circuit, and the Court was affirmed in an unpublished opinion issued on January 28, 1998. U.S. v. Baker, 134 F.3d 383 (10th Cir. 1998).

Prior to addressing Baker's motion, the Court notes that the present motion is not ripe for review. Upon examination of the record and Baker's section 2255 motion, the Court discovered that Baker had filed a Petition for Writ of Certiorari with the Supreme Court of the United States on

35-116

2-2

March 25, 1998. A section 2255 motion is a collateral attack upon the sentence which necessarily requires that the judgement first be final. 28 U.S.C. § 2255. However, a judgement cannot be final until all avenues of direct appeal have been exhausted. In short, Baker's section 2255 motion is rendered premature due to his Petition for Writ of Certiorari which is currently pending before the Supreme Court. Hence, the Court will not entertain Baker's present motion at this time.

Accordingly, Baker's section 2255 motion is hereby DENIED.

IT IS SO ORDERED this 29th day of April, 1998.



H. DALE COOK
Senior United States District Judge